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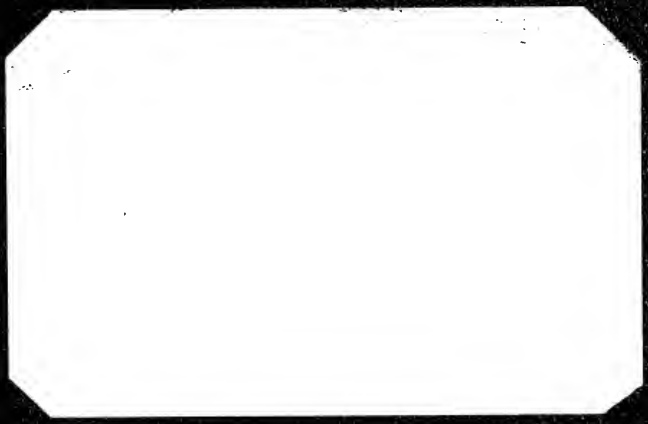

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A Goodman.

CONFISCATION OF REBEL PROPERTY.

SPEECH

Exchange
West. Res. Hist. Soc.

OF

HON. GARRETT DAVIS, OF KENTUCKY,

IN THE SENATE OF THE UNITED STATES,

258
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APRIL 22 AND 23, 1862.

The Senate having under consideration the bill (S. No. 151) to confiscate the property and free the slaves of rebels—

Mr. DAVIS said:

Mr. PRESIDENT: In future times the chapter of history that will be read with more of interest, with more of surprise, with deeper condemnation, and I will say even execration, than any that has yet been written, will be the history of this rebellion, its origin and causes, remote and immediate, its progress, and the stupendous conflict of arms that it has produced.

In ancient times, I have read from heathen mythology, that in a war, either of rebellion or international, among the heathen gods and demi-gods, there was one of them of gigantic proportions who was overcome and confined under Mount Vesuvius for his punishment, and the fable is, further, that whenever he turned over in the bed to which he had been consigned, that mountain would send forth its eruptions of molten lava. That fable is not an unapt illustration of the spirit of secession that has produced our present great difficulties. It is a spirit of gigantic proportions, and in its capacity and disposition for mischief and ruin it comes up to the fabled proportions of the ancient monster. Mr. President, I want that spirit of secession encountered, and I want it exterminated, annihilated. It will not do to confine it; it will not do to permit it to live and to give to it the power of locomotion, because so long as it does live and has the faculty to move it will be moving in the work of mischief and ruin. That spirit, nowhere in the United States where it has walked abroad, is yet subdued. It exists in my own State, and although it is still and quiet, it has as much latent energy and as much disposition to work mischief as it has had since it made its appearance in the United States. I admit that the most effective and proper course for encountering it, for making war upon it, and for the subjugation of that spirit of secession is by arms in the field. In the depth and truth and sincerity of my desire to have the spirit of secession exterminated, I yield to no man in this nation; but while we are at that work of conquest for the purpose of maintaining the Union and the Constitution of the United States, I am utterly opposed to the sacrifice of that Constitution or any one of its principles. The position of my State in this great contest has heretofore not been wholly satisfactory to me, and it is not now. I would have preferred that my native State had planted herself squarely and fully upon her constitutional duties, and had performed them promptly at the call of the proper authorities when this rebellion broke out. From the force of circumstances, the Union men of that State, who are as true to the Union as any men that breathe the breath of life, could not in that manner perform their great duty, and they cannot now put the State completely, fully, and squarely on the plain platform of her duty.

The position of my State and of myself has sometimes been referred to in terms of condemnation in this Senate, and out of the Senate, in the public newspapers, and in private circles. In relation to that matter, I have only to say that, proudly conscious of the rectitude of my position and the position of the Union men I represent on that question, if these imputations or charges against them and myself are of the character that they or I am disloyal, they are basely and utterly false. If they are made in the spirit of envy—I will not say envy, but of resentment, of malevolence, and slander, I scorn and defy them and their authors, whether they are in this Chamber or out of it. If they are made in the heat of passion and for want of correct information, I pity and I despise the charge and its authors. I have never hesitated, nor intended to hesitate, to give my support and my vote, and, if necessary, my voice, to any constitutional measure to put down this war by

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force of arms, by the civil legislation within the pale of the Constitution. I believe it is the honest and the true purpose of the President so to conduct the war, and in his conduct of it, so far as that conduct is to be indorsed by Congress, I intend to give him my full, unqualified, and hearty support.

I know, sir, that in times of war, and especially a war of rebellion, both the President and the armies of the United States have to perform many discretionary acts that are purely political, and that do not and cannot come under the supervision of the courts, but are referred wholly to the discretion of the functionaries charged with the exercise of those political powers. I know that in times of difficulty and great danger, when the life of the nation is imperiled, and when every effort of its true and honest citizens is required to save the nation and the Government, irregular power must necessarily be sometimes assumed. The assumptions of power, in such cases of exigence, I do not condemn; on the contrary, I give them my sanction and my approval. But these discretionary powers that thus lead to irregular, if not unauthorized acts, appertain wholly to the President and to the generals and armies in the field; they do not belong to Congress. I have faith and confidence that our armies in the field, in number, in prowess, and in military skill, are fully adequate to put down the rebellion and to assert the domination of the Constitution and the laws of the United States, and the authority of their officers in all the seceded States; but I do not believe that the contest is by any means over. On the contrary, I think there are now impending two conflicts in arms, the one at Yorktown, the theater where our liberty and independence in the war of the Revolution were in fact achieved, and the other on the Tennessee river, upon which hang very largely the continuance of this war.

Mr. President, I have regretted, and still regret, that in devising measures to carry on this war to a quick and successful issue, there has ever been any manifestation of party organization in either House of Congress. I would that the dominant party now in power had acted upon a different principle, that they had sunk party and partisanship in one universal, united, and devoted service by every Union man to the cause of the country, the Union, and the Constitution, and that they had determined deliberately to exclude from the consideration of Congress and all of its proceedings any question calculated to produce the least discordance or difference of opinion or views between the true and devoted Union men of every name and party, until the war was brought to a final and successful close. If they had chosen, in the exercise of their discretion and of their duty to their country, to act on that principle, in my humble judgment it would have restricted the continuance of this war months, if not years; it would have saved the loss of the lives of thousands and tens of thousands of our true and gallant men by disease in the camp and by slaughter in the field; and it would have saved the people of the United States the payment of millions and hundreds of millions in the cost of waging the war.

I, in common with the Senator from Ohio, [Mr. WADE,] who addressed the Senate yesterday, condemn the attempt to reorganize and to place upon its feet again the old Democratic party during the pendency of this great national conflict; but I equally and more condemn the mere party organization of the party in power in calling their exclusive party caucuses and holding their councils secretly, and determining upon the measures by which this war was to be waged and brought to its close. Sir, if one as humble as myself could have been invited to take counsel with the true men for the Union and the Constitution in the Senate for the purpose of putting down this rebellion, or chastising its authors, of subjugating the whole military power that has been brought to its support, of compelling unconditional obedience to the Constitution and the laws, and inflicting condign punishment on the authors of this great crime and mischief, upon the principles of the Constitution and for the inviolate preservation of that great ark of American liberty, I would have gone into such a council with as pure a purpose and with as devoted a heart as any man who calls himself Republican. But whenever other questions alien to the war, alien to the rebellion, alien to the honest, truthful, and undivided prosecution of the war for the purposes I have indicated, and for any mere political purposes whatever, had been introduced into the counsels of such a conclave, I would have entered my protest against the intrusion of such subjects, and if they had been persevered in, I would have taken my leave of that council, but at the same time would have maintained my position of unalterable devotion and fidelity to the Union, to my Government, and to my country.

Mr. President, I do not believe that war alone is an adequate and full remedy for the present great disease of the nation. I know it is the chief, the principal, and the most efficacious remedy, but in addition, and as ancillary to war, the Congress of the United States ought to pass measures to aid in this work of subjugating the rebellion and putting down opposition to the authority of the United States. In performing this duty, we have a chart and a guide. That chart is the Constitution of the United States. Congress, as the legislative power of the nation, has no right to exercise, and ought not to attempt to exercise, any power but what is specially and by name delegated to it by the Constitution, or is necessary and proper for carrying some express power into execution. Sir, we are all sworn here to support the Constitution of the United States. The President tells us solemnly and truthfully that his oath to that effect is registered in heaven, and I suppose the oath of every Senator in Congress has the same inscrutable registry. For one, sir, whenever there is a proposition in the form of a bill or joint resolution to become a law presented in this body in times of peace or war, I intend, according to my judgment and my conscience, to try and test such a measure by the provisions of the Constitution. If, when reduced to that test, I come to the conclusion that any measure whatever is in conflict with that instrument which I am sworn to support, I will oppose it and vote against its adoption. I know that such a position and such a line of duty is derided, scoffed at, reprobated, and denounced in the Senate and out of the Senate; but I scorn such denunciations. If I were capable of yielding to them against my convictions, I should either be a base knave or a craven coward. In yielding to them, I should stain my soul with the turpitude and the crime of perjury; and any man

who commits consciously any violation of the Constitution commits the same foul offense against his country and his God.

Having made these preliminary remarks, I shall now proceed to the consideration of the measure under discussion; and that I may not be guilty of any injustice to it, or to the distinguished and able Senator who reported it, or the committee by whose order it was reported, I will read the entire bill, with the exception of the seventh section. It is entitled "A bill to confiscate the property and free the slaves of rebels." The amendments which the honorable Senator from Illinois has proposed to the measure, according to my recollection and comprehension of them, do not materially change the sense of the bill or its effect, if it should become a law. I will therefore read the original bill.

Mr. TRUMBULL. Here is a copy of the bill, as amended.

Mr. DAVIS. I thank the honorable Senator for his courtesy. I will read the bill as it has been amended:

Be it enacted, &c., That the property, real and personal, of every kind whatsoever, both corporeal and incorporeal, and including choses in action, and wheresoever situated, within the limits of the United States, belonging to any person or persons beyond the jurisdiction of the same, or to any person or persons in any State or district within the United States, now in a state of insurrection and rebellion against the authority thereof, so that in either case the ordinary process of law cannot be served upon them, who shall during the present rebellion be found in arms against the United States, or giving aid and comfort to said rebellion, shall be forfeited and confiscated to the United States; and as to all property which shall be seized and appropriated as hereinafter provided, such forfeiture shall take immediate effect upon the commission of the act of forfeiture, and all right, title, and claim of the person committing such act, together with the right or power to dispose of or alienate his property of any and every description, shall instantly cease and determine, and the same shall at once vest in the United States.

SEC. 2. *And be it further enacted*, That every person having claim to the service or labor of any other person in any State under the laws thereof, who during the present rebellion shall take up arms against the United States, or in any manner give aid and comfort to said rebellion, shall thereby forthwith forfeit all claim to such service or labor, and the persons from whom it is claimed to be due, commonly called slaves, shall, *ipso facto*, on the commission of the act of forfeiture by the party having claim to the service or labor as aforesaid, be discharged therefrom, and become forever thereafter free persons, any law of any State or of the United States to the contrary notwithstanding. And whenever any person claiming to be entitled to the service or labor of any other person shall seek to enforce such claim, he shall, in the first instance and before proceeding with the trial of his claim, satisfactorily prove that he is and has been, during the existing rebellion, loyal to the Government of the United States; and no person engaged in the military or naval service of the United States shall, under any pretense whatever, assume to decide on the validity of the claim of any person to the service or labor of any other person, or to surrender up any such person to the claimant.

SEC. 3. *And be it further enacted*, That it shall be the duty of the President of the United States to make provision for the transportation, colonization, and settlement in some tropical country, beyond the limits of the United States, of such persons of the African race made free by the provisions of this act, as may be willing to emigrate, having first obtained the consent of the Government of said country to their protection and settlement within the same, with all the rights and privileges of freemen.

SEC. 4. *And be it further enacted*, That it shall be the duty of the President of the United States, as often as in his opinion the military necessities of the Army, or the safety, interest, and welfare of the United States in regard to the suppression of the rebellion, shall require, to order the seizure and appropriation, by such officers, military or civil, as he may designate for the purpose, of any and all property confiscated and forfeited under and by virtue of this act, situated and being in any district of the United States beyond the reach of civil process in the ordinary course of judicial proceedings by reason of such rebellion, and the sale or other disposition of said property, or so much of it as he shall deem advisable.

SEC. 5. *And be it further enacted*, That it shall be the duty of the officers so designated to make to the President full reports of their proceedings under such orders, which report shall be filed in the office of the Secretary of the Treasury; and all moneys received on the sale or rent or use of the confiscated property of any person aforesaid shall be deposited in the United States Treasury.

SEC. 6. *And be it further enacted*, That for the purpose of enforcing the forfeiture specified in the first section of this act of property situate and being in loyal States or districts in which the ordinary course of judicial proceedings is not obstructed by the rebellion, proceedings *in rem* may be instituted, in the name of the United States, in any district court of the United States, within which the estate or property so forfeited, or any part thereof, may be found, which proceedings shall conform, as nearly as may be, to proceedings in prize cases, or to cases of forfeiture arising under the revenue laws; and in all cases the property condemned, whether real or personal, shall be sold, and the proceeds deposited as provided in the fifth section of this act.

It will be observed from the reading of the bill that it creates two classes of persons whose property shall be forfeited. One class is composed of those who are out of the United States, or who are within the States now in rebellion, and in such position that the ordinary process of the courts cannot be served upon them. It then provides by different modes of proceeding for all that class of persons in arms in the rebellion, or giving it aid and comfort, who can be found within the loyal States, or in such position in the United States that the ordinary process of law can be served upon them. The white population of the disloyal States amounts to 5,450,831. The slaves in the same States amount to a fraction above the number of 3,500,000. By the last census, there are 3,953,587 slaves in the United States. There are 3,500,000 in the disloyal States—in the States that have seceded—and about 450,000 in the States that are yet loyal, including the western portion of the State of Virginia. I assume that there are as many disloyal men in the loyal States as there are loyal men in the seceding States; and I have no doubt that the number of disloyal men in the loyal States is larger than the number of the Union men in the seceding States. The result, then, is, that the bill takes from a number of white people equivalent to the entire white population of the loyal slave States a slave population equivalent to the entire slave population of the disloyal States. It not only takes their slave property, but it takes all the property that they own. What is the aggregate amount of the property of the disloyal States, according to the census tables? It is $6,792,585,742 in amount. The property of the loyal slave States amounts to $1,983,702,055; so that the aggregate amount of property in the southern States that is subject to be acted upon by the provisions of this bill, if it becomes a law, will affect upwards of six millions of people, and will deprive them of property of the value of $4,808,883,687—nearly five thousand millions of dollars. Now, sir, I ask if this measure in its proportions is not as gigantic as the insurrection and the war itself? Was there ever in any country that God's sun ever beamed upon a legislative measure involving such an amount of property, and such numbers of property holders?

I will take another view of this subject. The surplus production of the States that have seceded, amounts annually to between five hundred and six hundred millions of dollars. Of this large surplus,

at least one hundred and fifty millions are distributed to the loyal and free States for cereal grains, for meats, for stock, for mules, horses, and manufactured articles of various kinds. My own State of Kentucky finds a market annually in the southern States, growing out of the productions of their slave labor, to the amount of eight or ten millions of dollars, and the free States in the same market find a sale for their articles of natural or artificial production to the amount of at least one hundred and fifty millions of dollars. Look at the great grain-growing regions of the West, the Egypt of America in fertility and production. Where do they find their principal markets for their corn and their meats? Where do Indiana, Missouri, Ohio, Kentucky, and every other portion of the United States that produces and sells stock find a market for their stock? They find it in the same sunny South, producing cotton and sugar. Where do Chicago, Cincinnati, and the other manufacturing points of plows, agricultural implements, and all the machinery by which crops are produced and harvested, find their market for the sale of their manufactured articles? It is in the South. Where does New England, where does Massachusetts, find the principal market for her boots and her shoes, her coarse woolens, her coarse cottons, and her ice, even? It is in the South.

I intend to maintain and shall endeavor to show that this great and enriching market for the loyal and free States will be cut off by this iniquitous measure—for I so denominate it—if it should become a law. The great devotees to labor and industrial pursuits in the field of agriculture, and in the workshops, who find their markets and the rewards of their toil and of their labor and of their skill in the South, will rise up in earnest protest against any such measure as this. Their voice will be heard before long in this Chamber. It will be heard resounding throughout this nation; and it will be heard in a majesty and strength that will command obedience to it, and it will repress and put down such wholesale measures of confiscation, of injustice, of oppression, and iniquity.

I shall now proceed to a legal, constitutional examination of the provisions of this bill, and I shall endeavor to do it as clearly, as methodically, and as succinctly as I can.

The first question is, has Congress the power to pass the measure under consideration, and if it has the power, from what source does it derive it? I maintain that for Congress there is but one source of power, and that is the Constitution of the United States; that if Congress has any power to pass this bill it derives it by express delegation, or by necessary and proper implication, from the Constitution of the United States; and it can derive it from no other source. If the power is not given there, it is given nowhere; it does not exist; and an attempt to exercise it would be an act of usurpation on the part of Congress which any free citizen of the United States would have the right to resist by all the means and force which he could command, at his peril, abiding the judgment of the courts of the United States upon the question of the legality of his position. I assume that the law of nations, even if it was adopted by the express language of the Constitution, or by necessary implication, confers upon Congress no power whatever to pass this bill. I assume, furthermore, that if the body of international law was expressly adopted by a clause in the Constitution, or by necessary implication, every one of the principles and provisions of that law that stood in conflict with any written provision of the Constitution would fall before its paramount power, and in the United States would have no legal effect whatever. I will now read from two approved authors clauses of international law that bear upon the questions arising in this bill. I will read them consecutively:

"Nations composed of men, and considered as so many free persons living together in a state of nature, are naturally equal, and inherit from nature the same obligations and rights. Power or weakness does not, in this respect, produce any difference. A dwarf is as much a man as a giant: a small republic is no less a sovereign State than the most powerful kingdom.

"By a necessary consequence of that equality, whatever is lawful for one nation is equally lawful for all other nations, and whatever is unjustifiable in one is equally so in all others."—*Vattel's Law of Nations.*

"The whole international code is founded upon reciprocity. The rules it prescribes are observed by one nation, in confidence that they will be so by others."—*Wheaton's Elements of National Law*, p. 421.

Thus reads Wheaton, one of the most recent and approved writers upon international law. The question then arises, is the United States now in a state of war? It is, in the most general and universal acceptation of the term. It is engaged in a war to put down insurrection and rebellion at home, but it is not engaged in a war according to the distinction and the understanding of international law and according to the rights which that code of law assures to belligerents. The most general definition of war is, the state of a nation in which it is pursuing its right with force:

"A nation is a unity, an entirety, a consequence of which is, that when its sovereign power declares war against another nation, it is understood that the whole nation declares war against that other nation; for the sovereign power represents the nation, and acts in the name of the whole society: and it is only as a body, and in her national character, that one nation has to do with another. Hence these two nations are enemies, and all the subjects of the one are enemies to all the subjects of the other. In this particular, custom and principles are in accord."—*Vattel*, p. 391.

"All the members of the enemy State may lawfully be treated as enemies in a public war."—*Wheaton's Elements of National Law*, p. 491.

"From the moment one State is at war with another, it has, on general principles, a right to seize on all the enemy's property, of whatsoever kind, and whersoever found, and appropriate the property thus taken to its own use, or to the use of the captors."

But by the modern usages of nations, which have now acquired the force of law—

"Temples of religion, public edifices devoted to civil purposes, monuments of art, and repositories of science, are exempted from the general operations of war. Private property on land is also exempt from confiscation, with the exception of such as may become booty in special cases, when taken from enemies in the field, or in besieged towns, and of military contributions levied upon the inhabitants of the hostile territory. This exemption extends even to the case of an absolute and unqualified conquest of the enemy's country."—*Ibid.*, p. 421.

"The sovereignty of a nation is external or internal. External sovereignty consists in the independence of one political society in respect to all other political societies. It is by the exercise of this branch of sovereignty that the international relations of one political society are maintained in peace and in war with all other political societies. The law by which it is regulated has, therefore, been called external public law—*droit public externa*—but may more properly be termed international law."—*Ibid.*, p. 29.

Wheaton says:

"Sovereignty is acquired by a State either at the origin of the political society of which it is composed or when it separates itself from a community of which it previously formed a part, and on which it was dependent."—P. 30.

"This principle (sovereignty) applies as well to internal

as to external sovereignty. But an important condition is to be noticed in this respect between these two species of sovereignty. The internal sovereignty does not, in any degree, depend upon its recognition by other States. A new State springing into existence does not require the recognition of other States to confirm its internal sovereignty. The existence of the State *de facto* is sufficient, in this respect, to establish its sovereignty *de jure*. It is a State because it exists."

But it "must have declared and shown its ability to maintain its independence."

"Until the independence of the new State has been acknowledged, either by the foreign State where its sovereignty is brought into question, or by the Government of the country of which it was a province, courts of justice and private individuals are bound to consider the ancient state of things as remaining unaltered."—*Wheaton's Principles of the Law of Nations*, page 35, and authorities there cited.

Vattel says, in treating of civil war:

"It is very evident that the common laws of war, those maxims of humanity, moderation, and honor which we have already detailed in this work, ought to be observed in a civil war."

And he argues that this is a necessity to prevent retaliation, and to prevent the war from becoming cruel and savage. He says further:

"When the sovereign has subdued the opposite party, and reduced them to sue for peace, he may except from the amnesty the authors of the disturbance, the heads of the party; he may bring them to a legal tribunal, and punish them if they be found guilty. He may act in this manner, particularly on occasion of those disturbances in which the interests of the people are not so much the object in view as the private aims of some powerful individuals, and which rather deserve the appellation of revolt than of civil war."

That is particularly the case in the present rebellion against our Government:

"But when a nation becomes divided into two parties absolutely independent, and no longer acknowledging a common superior, the State is dissolved, and the war between the two parties stands on the same ground in every respect as a public war between two different nations."—Pages 425, 426, 427.

These are authorities of the highest reputation, and the principles laid down by them in the passages which I have read are, in substance: all nations are equal, and the same rights and obligations devolve upon them. International laws are those rules which define the rights and obligations and regulate the intercourse and relations of nations with each other, and which have their authority from the uniform recognition and observance of them by the civilized world. The rights and obligations established by international law are perfectly reciprocal, and whatever is right and lawful or wrong and unlawful, when claimed or done by one nation, is equally so when claimed or done by all other nations. Nations being equal and independent, and there being no common arbiter or authority to decide their disputes, every nation has a perfect right to go to war to assert its rights or to redress its wrongs, and of the sufficiency of the cause each nation for itself is the sole and exclusive judge; and, consequently, the laws of nations do not and cannot make any discriminations whatever between just and unjust international wars.

When national law treats of war generally, and without language defining some other kind of war, it means war between two or more nations. War is the state when one nation is pursuing another nation for its right with force. A nation is a unity, an entirety, and consequently when the war-making power of one nation declares or wages war against another nation, all the citizens and subjects of both nations are considered and treated as at war with each other. All the relations of war and peace between one nation and another nation are in their national character, as individual bodies, and they have no rights, obligations, or relations whatever represented by their individual subjects or citizens; and when two nations are at war with each other, all the subjects and citizens of both are mutually enemies. Formerly, when two nations went to war, each had the right to seize immediately all the property of whatsoever kind and wheresoever found of the other, or its subjects or citizens, and to appropriate it to its own use, or to the use of the captors. But by modern international law, temples of religion, public edifices devoted to civil purposes, monuments of art, repositories of science, and private property on land, except in cases of extreme stress and necessity and excepting such as may be taken from enemies in the field or besieged towns and contributions upon the inhabitants of a hostile country, are exempt from confiscation, even after the permanent conquest of the country by the enemy.

These principles were established for and apply only to sovereign and independent States, and never to a nation and any of its rebellious parts or people until they have declared their independence, and demonstrated their ability to maintain it. They then have established their internal sovereignty; and being absolutely independent, and having formed a separate government for themselves, they are a State, or nation, distinct from the one of which they were previously a part; and all international law applies mutually and equally to them both. But in all the intermediate stages from the first revolt to the consummation of the revolution, although civil war may rage violently and widely between the contending parts, yet they still form but one State; and international law, which applies to nations each as a unity and entirety, has no more application to them than it had before their struggle began. The part which adheres to and is represented by the Government, has against the other no belligerent international rights. It cannot, under the laws of nations, confiscate or forfeit the property of the other, or acquire by right of conquest the portion of the country inhabited by it, or pursue toward it any other line of conduct, having its rightfulness and authority in those laws. Those laws are reciprocal; they devolve the same rights and obligations upon all the parties in any war to which they are applicable. They can be applicable only to nations who are independent and equal, and are wholly inappropriate to the Government and the insurgents in all cases of rebellion.

In our own case all the rebels are traitors and criminals, and they cannot put in operation or claim a single belligerent right until they shall have demonstrated by the success of their arms, their ability to maintain their independence. Before this is done, however discordant and warring our condition may be, all the people of the United States are together but one nation, and are so to be treated by all others; and the parts or people in revolt, although they may have declared their independence and formed a separate government for themselves, cannot be entitled to any rights or privileges from the laws of nations. Hence all the confiscations, forfeitures, and seiz-

ures, made or authorized by the rebels of the southern States, are wrongs and outrages without right, law, or excuse; and all their deprivations of life of human beings, whether by the judgment of pretended civil or military courts, or in battle, are flagrant murders; and their authors are subject to the same liabilities, pains, and penalties of wrong-doers and murderers generally, with deeper execration for more enormous guilt.

If these rebels were made responsible by international law, they would be entitled to its immunities by its principle of mutuality and equality among belligerents, and could properly and rightfully do, against the loyal people of the United States, every act for the seizure, confiscation, and appropriation of property or the destruction of life which our Government could lawfully authorize to be done against them. But in carrying on the war, both they and the United States are subject to the usages and modes of war, which have been established by the principles and practices of civilized and Christian nations, that are alike applicable to all wars, whether they be international or civil and domestic. Neither party can murder or enslave prisoners, and both must spare the vanquished when they have laid down their arms. Neither party can use poisoned weapons, or poison water and food; and both must observe flags of truce, armistices, cartels for the exchange of prisoners, and all the principles of humanity, honor, and good faith, so far as the practices of nations in modern times have invoked them to mitigate the horrors of all war. During the pendency of the conflict, the United States are restrained by these principles and practices from all civil or military executions of the rebels for the purpose of obviating bloody retaliations, and preventing the war from becoming cruel and ferocious in its character. But when the United States have subjugated the rebels, and freed all loyal men from their power and revenge, its courts may then bring to trial and punishment such of them as can be arrested, according to the forms and sanction of their laws, and the discretion of their proper authorities.

But neither the existing rebellion in our country, nor the domestic wars of any other country, are the subjects or the objects of international law or of the rights and duties established by it. Such wars are domestic concerns, appertaining exclusively to each nation afflicted by them, and for which each has the perfect and unquestionable right to prescribe any means, mode, laws, and punishment to quell it, according to its sovereign will, so that they do not outrage and shock the universal laws of humanity. Congress has never passed any law or the United States courts made any decision in conflict with those principles. The United States have acted upon this general principle in creating and organizing all the forces and machinery to execute their laws, to suppress insurrections, to crush treason and punish traitors, and to protect the States against invasion and domestic violence; and these forces and this machinery are embodied in the Constitution and laws of Congress, and are distributed among the three departments of the Government.

Mr. President, the Supreme Court, in the celebrated case of the United States *vs.* Brown, and in the cases of the Sally, and the Rapid, and the Venus, decided that the property proceeded against was enemy's property or *quasi* enemy's property; that it did not belong to a citizen or any number of citizens in a state of rebellion or insurrection, but that it was the property of citizens of a foreign and independent nation, and as such was liable to be proceeded against and condemned by the prize and other national law. The particular question decided in the case of Brown was this: after the declaration of war in 1812, some property belonging to a subject of England was brought within the United States, and the most difficult question in the case was, whether it was property still afloat or on land, and the Supreme Court decided this, and this only, that that property was subject to confiscation, but that an act of Congress was necessary to give effect to the confiscation.

Mr. COLLAMER. Will the gentleman suffer me a moment to remind him that in the Brown case the question was, whether property of the enemy, which was in the country when the war was declared, could be seized as prize of war and subject to confiscation? They decided that it could not be without an act of Congress. That was the question.

Mr. DAVIS. That does not vary the principle I am contending for.

Mr. COLLAMER. Not at all. I only wanted to put the gentleman right as to the true state of the case. That was the question.

Mr. DAVIS. The other question arose incidentally, and was argued at great length, whether the property was afloat or on land

Mr. COLLAMER. Yes, sir.

Mr. DAVIS. There being a different rule of law in relation to confiscation of property upon the sea or afloat and property on land. But the principle there decided, and upon which I rely, is simply this: that the property declared to be subject to confiscation by act of Congress, was the property of an enemy then at war with the United States, and therefore, under international law, was properly subjected to confiscation by an act of Congress. In the other cases, the principle decided was that if an American citizen is domiciled in a foreign country, against which our Government declares war, at the time of the declaration of war, and he puts himself in motion to return with his property to his country within reasonable time, his property is exempt from capture and confiscation; but if he puts his property afloat on the ocean for the purpose of trade, or if he is absent himself from the enemy country and sends to the enemy country to have his property brought to the United States, in both states of the case the Supreme Court decides that the property assumes the character of enemy property, as though it belonged to the subjects of the nation with which we are at war, and is just as much subject to capture, prize, and condemnation as if it were in fact and *bona fide* enemy property. So neither these cases nor any other cases that have been decided by the Supreme Court touch the question now under consideration and involved in the bill. Every act of Congress that has made provision for capture, for confiscation, for prize, and all the cognate acts, are made in relation to a state of war between the United States and other nations, and in relation to property that is owned by the subjects or citizens of other nations, or in relation to property which is *quasi* owned by the subjects or citizens of other nations. The question how far Congress

by law can confiscate the property of a citizen, loyal or disloyal, except in cases of violation of revenue laws, to which I will refer presently, is wholly unacted upon by Congress in the passage of any law or by the United States courts in their decisions, according to my reading and researches.

The Government of the United States is more excellent than all others, not only for its free and popular character, but also for its written and stable Constitution, which clearly enumerates, defines, and limits all the primary and principal powers of the Government, but separates them into three departments, and provides for the same number of coördinate and independent bodies of magistracy to execute the powers assigned to each. In this mode, it not only provides against a dangerous concentration of power in the same hands, but creates mutual checks and balances to prevent the usurpation or abuse of power. It is the fundamental law of our Government, and it is the bond of union which binds the States together. It is perpetual, and also immutable, except in the deliberate and difficult mode which it prescribes for its own alteration. The American people, acting by States, ratified and established it, and by its own provisions made it, the laws of Congress, and the treaties of the United States, then, or to be thereafter made, the supreme law of the land, and the judges of every State to be bound thereby, anything in their constitutions and laws to the contrary notwithstanding; and required the Senators and Representatives of the United States, the members of the several State Legislatures, and all executive and judicial officers, both of the United States and of the several States, to be bound by oath or affirmation to support it. Its authority is not only paramount, but it is continual, uniform, and uninterrupted; and there is no power that can suspend or dispense with it, or any part of it, except Congress may suspend "the privilege of the writ of *habeas corpus*, when in cases of rebellion or invasion the public safety may require it." Throughout all the times of war and peace, its stable and fixed authority and operation are without pause or variableness. Its great founders never intended that it should be thrown into a state of catalepsy by the shock of war, or they would have so written one of its provisions. They were too wise not to know that its protection was more needed for private right and public liberty in the midst of the license and violence of war than in the passionless calm and security of peace. They intended that in our country it should refute forever the pusillanimous concession of Cicero, which had been so long received by the world as an aphorism, "*Leges silent inter arma.*" It is the bulwark of American civil and religious liberty, and it is only the enemies of both who seek its destruction by open assault or by Machiavelian machinations. When it falls, the liberties of our country will be buried under its ruins.

This Constitution, in its own provisions, is all the law, or is the source and authority of all the laws which apply to the United States as a nation. Congress may pass laws at large and in detail, or it may, by general language, adopt other bodies of law, as the common law, the civil law, international law, the maritime law, the mercantile law, and martial law. But whether any or all those bodies of law be adopted by Congress or the Constitution, in their whole or part, each and every principle of the bodies of the law so adopted, in conflict with any express principle or provision of the Constitution of the United States, would fall before the paramount authority of that Constitution, and be of no validity whatever in the United States. If such conflicting principle or provision of any bodies of law before referred to, was, *in totidem verbis*, written in an act of Congress, no sensible man would controvert the position that it would be void and of no effect; and it being provided for in general and indefinite language, would add to the force of that truth. Many powers of Government, arising by implication under the Constitution, upon the principle that they were necessary and proper to carry into execution expressly delegated powers, would give rise to a difference of opinion among able and good men. But there can be no such conflict where any power sought to be implied is expressly negatived by or plainly inconsistent with a written provision of the Constitution. That the implied right or power must yield to that which is expressed, is the universal rule in giving construction to all written instruments; and especially it is so in construing the Constitution, which the sovereign power of this country has declared and established to be "the paramount law of the land."

The Constitution has provided for its own protection, preservation, and perpetuity, and for that of the Government and the country. The principles that all laws, State or national, in conflict with it, are of no validity, and that all officers, national or State, shall swear to support it, form one of its great defenses. But it has other guards and protections in other express provisions. They are distributed among the three departments of the Government, so that each body of its magistracy has a part of the duty and responsibility of this defense. Our ancestors were too sagacious, too jealous of power, and too true to liberty, to intrust this wholly to one man, or even one body of magistracy. I will read a number of those provisions of the Constitution which are most applicable to the present condition of the country, and by authority of which the existing rebellion is to be subdued:

"The Congress shall have power to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defense of the United States;"

"To borrow money on the credit of the United States;"

"To define and punish piracies and felonies committed on the high seas, and offenses against the laws of nations;"

"To raise and support armies," &c.;

"To provide and maintain a navy;"

"To make rules for the government and regulation of the land and naval forces;"

"To provide for calling forth the militia to *execute the laws* of the Union, *suppress insurrections*, and repel invasions;"

"To provide for organizing, arming, and disciplining the militia, and for governing such part of them as may be employed in the service of the United States," &c.;

"To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the Government of the United States, or in any department or officer thereof."

"The Congress shall have the power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

"The United States shall guaranty to every State in this Union a republican form of government, and shall protect each of them against invasion, and on application of the Legislature, or of the Executive, (when the Legislature cannot be convened,) against domestic violence."

"The President shall be Commander-in-Chief of the Army and Navy of the United States, and of the militia of the

several States when called into the service of the United States."

"The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session."

"He may, on extraordinary occasions, convene both Houses of Congress, or either of them;" "he shall take care that the laws be faithfully executed," &c.

"The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish."

"The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States," &c.

These clauses of the Constitution embody and confer all the power and authority that is possessed by the Government of the United States to deal with the present rebellion. The duty and power of self-defense are both devolved upon that Government, but that self-defense must be made by the means and in the mode prescribed by the Constitution, as I have read from it, and the laws of Congress in conformity to it. The adoption of any other mode or means would be a usurpation of power which every citizen could rightfully resist. Congress has power to declare war against foreign nations, but not against any of the States, or any portion of the people of the United States. They form but one nation, and it is the duty of the Government to defend not only all the States, but every part, and every citizen of each of them. If any State should be convulsed by domestic violence, on being invoked by its Legislature or Governor, the Government of the United States is bound to suppress it. The Constitution defines what shall be treason against the United States. Congress has passed a law to punish all persons guilty of that crime with death; and the courts are required to enforce that law against all persons who shall have committed it, according to the forms of judicial proceedings. It is the duty of the President to see that the laws are faithfully executed. Courts and marshals are the magistracy by which this office is ordinarily performed; but there may be combinations of men so powerful as to baffle and defeat all their efforts to enforce the law. The President, in cases where it is needful, interposes, and assists them with a portion or with the whole of the military and naval power of the United States, of which he is the Commander-in-Chief. But the resistance may assume the proportions of an insurrection, of a great rebellion, as is now the fact; and the President may call forth the militia of the United States to the utmost limit of numbers authorized by the laws of Congress, and combine this military power with the ordinary Army and Navy of the United States, to subdue the insurrection. He may also convene Congress in extraordinary session, and that body may set in the field the whole military population of the United States, sustained by all their moneyed resources, under the President's control as Commander-in-Chief, to enforce the execution of the laws, to suppress the insurrection, to crush the present stupendous rebellion.

But the whole war power of the Government is vested by the Constitution exclusively in Congress. It alone can declare war and may authorize general hostilities, as against Great Britain in 1812, or may limit them, as against France in 1798. The President cannot raise and support armies, or impose taxes, or borrow money, or make appropriations to support them, or to conduct any operation of Government. He cannot call out the militia to execute "the laws of the Union, suppress insurrections, or repel invasions," except so far as he is authorized by the laws of Congress. He is simply the Commander-in-Chief of the Army and Navy, and of the militia when in the service of the United States; and as such, he is clothed with no more authority, nor can he do any other acts, than the senior general in the service of the United States or any other citizen might, whom the Constitution had designated as such commander-in-chief. In conducting war against a foreign nation, suppressing domestic insurrections, and repelling invasions, he is but the executive officer of Congress, and always subject to its control. Indeed, the chief power and vigor of the Government of the United States is not with the President but with Congress, and it has placed at his disposition an army numerous as the hosts of Xerxes to quell and reduce to submission to the laws an organization of insurgents not less numerous.

The United States are now at war, not with a foreign or independent nation, where international law and the rights of belligerents would apply and govern, but they have on hand a domestic war to put down the greatest rebellion of which history has made any record, and the authority and law by which it is to be done is found in their Constitution and the acts of their Congress. They have power to suppress this insurrection by making war upon it, to which they may apply all the military and naval power and every resource of the nation that may be put in requisition by laws passed by Congress. But the power of Congress to carry on this war is restricted to the suppression of the insurrection alone, and when that work is done the power of Congress to carry it on also stops. Until then, it and its generals and armies may conduct the war in the modes and with all the rights appropriate to actual hostilities, for no other end than to bring the insurgents to submit to the Constitution and the laws. The armies of the United States may pursue and engage in battle, and slay and capture the armies of the insurgents, blockade their ports, besiege and storm their towns, seize and appropriate their arms, munitions, and military stores, and all other property that they bring into their armies to be used in aid of the insurrection. But outside of the property used in open and active resistance in fact, by organized forces, to the authority and laws of the United States, our armies have no power, by national law or by the long and uniform usage of all civilized nations, to seize, appropriate, or confiscate the property of loyal or disloyal citizens to put down the existing rebellion. All rebellions concern the nations alone where they break out, and each one adopts of its own will different and varying measures and means to suppress them. As to such domestic wars there is no national law or uniform custom and usage of nations, except a common resort to force of arms to reduce the rebels, and a seizure of every material used by them as a means to strengthen their hands in their revolt.

The examples of the confiscation measures adopted by France and England, at different times, and by several of the States during the revolutionary war, prove nothing in support of the position that Congress may now pass a confiscation or for-

feiture act against the rebels. The Government of England was not limited in this respect by any constitutional provisions, and the power of her Parliament over this and all other subjects is omnipotent; and that of France was a despotism in theory and fact, and bound by no limitations upon this or any other matter. When the States referred to, during our war of the Revolution, passed their separate and diverse acts of confiscation they were each sovereign, and were severally possessed of and in the exercise of plenary and unrestricted powers of legislation and government. But Congress has no powers but what are conferred upon it by the Constitution, and such unenumerated and incidental powers as may be necessary and proper to carry into execution those expressly vested. Treason and insurrection are cognate subjects and crimes, and the Constitution has expressly provided how both shall be treated; and no different mode for either, by implication, is allowable.

I have already argued partially of insurrection, and of the remedy which the Constitution has provided for it; but a part of the remedy is the definition it gives of treason, and the punishment which it authorizes Congress to declare for it. Every citizen engaged in an insurrection is guilty of treason, and punishable as a traitor. So far as the Constitution treats of insurrection, *eo nomine*, and authorizes it, which is war, to be put down by military force, by countervailing war, it does not intend or contemplate at all the punishment of the insurgents, but only to put an end to the insurrection, the organized and armed resistance to the authority and laws of the United States. The punishment of the insurgents is provided for in another clause of the Constitution, and therefore it is not to be derived or argued from that which authorizes the "calling forth the militia to execute the laws of the Union and to suppress insurrections." The matter of the punishment of the insurgents, of traitors, must be looked for, and learned, from those provisions of the Constitution which treat particularly of it, and those others which relate to it and all other punishment for crimes. I will here read them:

"The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood or forfeiture except during the life of the person attainted."

This is the only clause of the Constitution which speaks of the punishment of treason; and it recognizes, what has never been denied, that it may comprehend as well the loss of the property as the life of the traitor. Both are the punishment of the offender, and not of the offense or property forfeited. The idea of punishment being attached to the offense or the offender's property, is simply absurd and impossible. By the existing law of Congress providing for the punishment of treason, forfeiture of property is expressly withheld: it may be made an additional punishment prospectively, but for no longer period than the life of the offender. Both branches of this clause of the Constitution are to be considered together. The first confers upon Congress the *general power* to declare the *punishment*, but the latter prohibits the *attainder* or *judgment* for treason from operating the corruption of the blood, or the forfeiture of the property of the offender for a longer period than his life; and necessarily, to that extent, qualifies and restricts the power to declare the punishment of treason. It is not the meaning of this provision, that Congress can pass a law denouncing the corruption of the blood, and the forfeiture of the property of the traitor, indefinitely and for all time, and yet, that the courts in applying that law, should be required to restrict their judgments of the corruption of the blood and the forfeiture of the property to the life of the offender. The power to declare by Congress the punishment, and the power to pronounce by the courts the judgment against treason, are harmonious, and both are plainly limited to the life of traitors. This is the construction of the Constitution by Story and every authority that is even respectable.

The first paragraph of section three, article three, of the Constitution (I have just read and commented upon the second paragraph) is in these words:

"Treason against the United States shall consist only in levying war against them, or adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court."

But there are other clauses of the Constitution which bear materially upon treason and traitors, and all other crimes and criminals under the laws of the United States, which I will also read:

"No bill of attainder or *ex post facto* law shall be passed."

"The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed."

"No person shall be held to answer for a capital or otherwise infamous crime, unless on an indictment of a grand jury, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger; nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him," &c.

The great principles of liberty declared in these provisions of the Constitution have their origin in the common law of England, were established by the Saxon race a thousand years ago, were in part incorporated in Magna Charta, which was wrested from a Norman tyrant by the bold barons of that island at Runnymede, and were plainly and deeply graven upon the pillars of our Government, for the instruction, guidance, and control of all its functionaries, and as an imperishable defense of the American people. They are set forth in such plain and concise language in the clauses which I have read that any other statement of them would be no improvement. I will, however, here remark, that one of them relates to the trial of *all crimes* except in cases of impeachment; and another to all criminal prosecutions; and it is provided that the trial of *both crimes and criminals* shall be by *jury*.

Mr. Justice Blackstone, in treating of the trial by jury and referring to a remark of Montesquieu, says:

"A celebrated French author, who concludes that, because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury."

Where the trial by jury prevails, according to the principles of the common law, there liberty to some considerable extent dwells; but when the trial by jury departs from any cause, civil liberty flies from that land forever.

Every candid and intelligent man will concede that if the bill under debate is in conflict with any one principle established by the clauses of the Constitution to which I have asked the attention of the Senate, should it be passed, it would be void and inoperative. I hold, and will now attempt to show, that it is palpably and plainly in conflict with many of them. First, it is in substance and effect a bill of attainder. An act of Congress which declares individuals by name, or by description and classes, to be guilty of treason, murder, or other felony, and inflicts upon them the punishment of death or the forfeiture of property, without the intervention of a court and judicial proceedings, would be a bill of attainder. The first section of this bill proposes to forfeit and confiscate to the United States the property "within them of all persons beyond them, or within any State or district of the United States now in a state of insurrection and rebellion against their authority, so that in either case the ordinary process of law cannot be served on them, *who* shall, during the present rebellion, be found in arms against the United States, or giving aid and comfort to said rebellion." It also authorizes the President "to designate any civil or military officers to seize the property so confiscated, and sell that so seized, or so much of it as he shall deem advisable, and to pay the proceeds into the Treasury of the United States." Courts and judicial proceedings are wholly ignored, and without their agency punishment, by forfeiture of property, would be inflicted by the law upon a class of individuals ascertained only by vague description, and whose numbers would be thousands and hundreds of thousands; and the President would be authorized to execute this judgment against myriads pronounced *only by the law*.

Another no less conclusive objection against the bill is, that it would be the usurpation and exercise of a judicial power by the legislative branch of the Government, when the whole judicial power of the United States is vested exclusively in the courts. To obviate these objections the bill would have merely to define or identify the crime, and declare its punishment, and leave it to courts and juries to try and adjudge whether the law and facts in the case of each individual established against him his guilt of the crime. From reading this bill, I was in doubt whether it was intended to have both a prospective and retrospective operation, or only the former. I think its verbiage and arrangement leave that point in much obscurity, but the able Senator who reported it informs the Senate that it was the intention of the committee by whose order it was reported, and of himself also, to make it prospective only; and that if it is not sufficiently clear on that point it can be made so by amendment. But three other objections to this bill arise out of the third section of the third article of the Constitution.

1. The crime denounced and intended to be punished by it, though not denominated, yet, from the language used, it is quite clear is meant treason.

In the definition of treason by that third section the language is nearly identical with that used by the statute of 25 Edward III, to define treason in England. Her courts and the Supreme Court of the United States have ruled that the words, "adhering to their enemies, giving them aid and comfort," found both in the act of Parliament and our Constitution, mean by the term "enemies," not a portion of the people of either country in a state of insurrection or rebellion, but a *foreign nation* with which the countries respectively are at war. Wherefore "the giving aid and comfort to the existing rebellion" cannot be made treason by an act of Congress.

2. "No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or confession in open court."

This bill does not require the testimony of two witnesses, or one witness, or any confession in open court, or any overt act, or any conviction in the cases comprehended by its first section. It assumes the guilt, without trial and conviction, and without testimony or confession, and without overt act or guilty intention, of an indefinite number of persons, and authorizes officers, civil or military, to be designated by the President to brand whom they will as criminals and traitors by seizing their property upon such imputation; and if they seize the slaves of a loyal man in his own possession, to regain them he is required not only to prove his right to his slaves but also his loyalty to the Government of the United States during the whole existence of the rebellion. This view also establishes that the bill, if enacted, would be unconstitutional and void.

3. The terms "confiscation" and "forfeiture" have the same character of legal significance; but the latter, being of the broader import, includes the former. This third section says:

"No attainder [judgment] of treason shall work corruption of blood or forfeiture, except during the life of the person attainted."

The bill declares the forfeiture of property in general language, without restriction as to the time of its continuance and effect. But for this limitation of forfeiture in this provision of the Constitution, under the bill, it would be in perpetuity. Thus another unconstitutional objection to the measure is established.

In the still remaining doubt whether this bill is not subject to the objection of being *ex post facto*, I will here say a word in exposition of that principle. Any law which makes an act a crime which was not criminal when it was done, or if then a crime, aggravates its enormity or punishment, or requires different or less evidence to convict an offender than was requisite when the offense was committed, is *ex post facto*. Laws which would inflict pecuniary penalties, or forfeitures of property, or which would increase them after the criminal act, would be subject to the same constitutional objection. (See Story's Commentaries on Constitution, sec. 1339, and Fletcher *vs.* Peck, 6 Cranch, 138.)

Mr. President, I have not heard any Senator controvert the positions, that where a citizen is under prosecution for treason, or any other crime, and is being tried for the purpose of *personal* punishment, that he must first be indicted by a grand jury, be brought publicly to trial in a court within the State and district where the crime is

charged to have been committed, tried by an impartial jury thereof, confronted with the witnesses against him, and have the benefit of counsel.

It is often contended that the law may declare the forfeiture of the property of a criminal as a part of his punishment, and the title of his property may be vested by the law in the United States upon the commission of the offense, and the courts be authorized to proceed against the property *in rem*, and try, without the intervention of a jury, whether the crime which caused the forfeiture had been, in fact, committed, and order the sale or discharge of the property, as it might adjudge that fact; but never, until the present session of Congress, have I known the position to be assumed that property, so declared to be forfeited, could be seized and sold, the sale pass the title to the purchaser, and the proceeds to be paid into the Treasury of the United States, and the owner to be thus forever deprived of his property and all compensation for it, without any finding of a jury or judgment of a court. Such a course of procedure is not allowable; it is unconstitutional; it is monstrous! I am aware that for a violation of the revenue and other laws of the United States, property connected with such violations is directed by those laws to be seized, and the validity of such seizures has been sustained by all our courts; and that those courts have proceeded, in conformity to the provisions of those acts of Congress, *in rem*, against the property they declare to be forfeited, and have, by their judgment and decree, ordered it to be sold for the benefit of the United States and private individuals connected with its seizure; but so far as I know, or am informed, no court of the United States ever decided that the property of a citizen could be taken from him and sold, and he be divested forever of his right to it, and of all compensation for it, without the inquiry and judgment of a court, whether the state of fact which was to produce the forfeiture had occurred. I believe that Congress has never yet passed an act dispensing with such inquiry and judgment. Even in a state of war with a foreign nation, such a proceeding is required in relation to the enemy's property captured on the high seas. In the case of Gelston *vs.* Hoyt, (3 Wheaton, 246,) the Supreme Court decided that:

"By the Constitution the judicial power of the United States extends to all cases of law and equity, arising under the Constitution, laws, and treaties of the United States, and to all cases of admiralty and maritime jurisdiction; and by the judiciary act of 1789 (chapter 20, section 9,) the district courts are invested with exclusive original jurisdiction of all causes of admiralty and maritime jurisdiction, and of all seizures on land or water, and of all suits for penalties and fines under the laws of the United States; and consequently, the right to decide upon the same, by the very terms of the statute, exclusively belongs to the proper courts of the United States, and it depends upon the final decree of the court, *in rem*, whether the seizure is to be adjudged rightful or tortous. If a sentence of condemnation be pronounced, it is conclusive that a forfeiture is incurred; if a sentence of acquittal, it is equally conclusive against the forfeiture—and in either case the question cannot be litigated in any other forum."

Accordant is the case of Slocum *vs.* Mayberry. (2 Wheaton, 3.) These cases recognize the plain principle, that the question of the forfeiture of property under the laws of Congress, is in every case a *judicial question*, the decision of which belongs, both by the Constitution and the judiciary act of 1789, *exclusively* to the United States courts. Congress has no power to transfer the decision of such questions to any other tribunal, or magistracy, or itself, to decide them.

It will be observed that those cases sustain the validity of laws for the forfeiture and seizure of property, and its condemnation by courts by proceedings *in rem*, only for infractions of the *revenue laws*, and other laws relating to *trade* or *civil polity*. There may be found in other decisions *dicta* which intimate or even declare that Congress may pass laws for the forfeiture, seizure, and sale by courts in proceedings *in rem* of property for offenses that are *mala in se*, as well as for those that are only *mala prohibita*. But I have not been able to find a case in which the question of a difference between the two classes of cases, in respect to the right of the owner of the property to have the question of the fact of forfeiture to be tried by a jury, was decided, or argued, or made. Indeed, I have not observed any case in which that question was directly decided, argued, or made, in relation to the forfeiture of property for offenses *mala prohibita*. I feel a good deal of confidence that as to offenses *mala in se* the question is undecided and open, and ought to be decided by a just and true understanding of the Constitution and the laws of Congress.

I maintain that all forfeitures of property are intended, and in fact are punishments of the *owners* of such property for some actual or *constructive* default or offense of the owner or person having the control of such property. The notions imported by the phrases "guilty property" and "the punishment of property," are absurd and nonsensical. Property, except slaves, is wholly incapable of guilt and impervious to punishment. It is unconscious, insensate, far away both from guilt and punishment. But its forfeiture does punish the owner, and forfeiture of property is often only less grievous punishment than forfeiture of life. When judges and courts use the phrases "enemy property" and "guilty property," it is to express its particular situation without a multiplicity of words.

I admit that laws may be so framed as to punish a criminal by separate proceedings in court, both *personally* and by *forfeiture* of his *property;* and that an arrest of the person of the criminal, and his trial and conviction, are not necessary to authorize a judgment for the forfeiture of his estate where the law provides for such separate proceedings. But where the proceedings are separated, to produce a constitutional and valid forfeiture of either life or property, there must be judicial proceedings, and a judgment of a court establishing the facts upon which the forfeiture is to ensue. A person guilty of treason may be made to answer for it by two distinct trials in court, and by two kinds of punishment, after the law shall have so provided—the one by the loss of life, and the other by the loss of property. By both modes the commission of the crime by him has necessarily to be inquired of and adjudged by the court where either the crime or criminal is tried; in both, the criminal is punished; but in neither is there, nor can there be, any *punishment* of the *crime*.

The Constitution asserts that "the trial of *all crimes*, except in cases of impeachment, shall be

by *jury;*" and also that "in all *criminal prosecutions* the *accused* shall enjoy the right to a speedy and public trial by an impartial *jury*," &c. The first provision is in the original Constitution, and requires "the trial of *all crimes* to be by jury;" the second is an amendment, and requires "the *accused* in *all criminal prosecutions*" to be also *tried* by a *jury*. It is within the power of Congress to pass a prospective law attaching the additional punishment of the forfeiture of his property for his lifetime to the criminal. The judicial power of the United States' courts would extend to all cases arising under such a law, and every case would have to be instituted according to the forms of judicial proceedings, and is directed by the Constitution to be tried by a *jury*. Because this bill is arranged so as to evade that mode of trial, also, it is in conflict with that instrument.

And yet it is liable to another constitutional objection. It provides for the forfeiture of probably millions of slaves, who are scattered all over the fifteen slave States, and declares them all to be immediately free, and leaves them in that condition in the States where the law will act upon them to make this change in their condition. Congress has no expressly granted or *incidental* power to emancipate these slaves. In relation to each slave State, the freedom or thralldom of their slaves is a great question of domestic State polity, over which Congress or the United States Government has no jurisdiction. It is a matter of transcendent interest and importance to most of those States, and no conceivable measure, or spoliation, short of stripping them of all their lands, would, for the present or the future, approximate the magnitude of this measure. It would take from the cotton States the bulk of all their worldly wealth, and reduce them to poverty, wretchedness, and despair; and they will never succumb to it while they can raise an arm to resist it. Congress has neither the expressly delegated nor implied power to liberate these slaves. The implied powers can only be such as are appropriate to the execution of some express power, and must be merely ancillary and incidental to such express power. On the pretext of invoking assistance to execute an express power, Congress cannot assume a greater and more extensive one, particularly one so formidable as to enable it, as to fifteen States, to break down the great principle of our complicated system—that all the internal affairs of the States are exclusively under their own governments.

I ask to know what enumerated power of the Government is to be executed, or to be assisted in its execution, by Congress seizing upon the power to liberate millions of slaves. It is not necessary to enable the Government to subdue the rebellion. Indeed, it would strengthen the rebellion by energizing with despair the rebels, and producing with thousands and tens of thousands of loyal men, in the free as well as the slave States, a feeling of alarm, revulsion, and condemnation for an act of usurpation so flagrant and dangerous. Congress could omit all forfeiture of the slaves; but that is *the not denied pretext* to give a semblance of power to free them. To coin money, could Congress seize all the jewelry and plate which is owned by the American people? To carry on the war against the rebellion, could it rob all the banks of the United States? No Union citizen that I have ever heard of has asked that this war be conducted by the United States for the defense of slavery, or objected to slaves being forfeited like other property. All that the Union slaveholders ask for slave property is, that it shall be treated by Congress and the Government and the Army impartially and equally like other property; and if by such course slavery is to be damaged or to fall by the war, they will make no complaint; but they do, will forever, protest that the war shall not be made a crusade against slavery.

But while we admit the power of Congress to pass laws for the forfeiture of slaves for the life of the owner who has committed treason, upon another ground we deny its power to emancipate them. "Forfeiture" and "confiscation" are technical terms—terms of legal art. They have a precise and well-understood legal meaning, as much so as "bill of attainder," "*ex post facto* law," writ of "*habeas corpus*," and other legal phrases embodied in the Constitution. The meaning of these terms was fixed by their adoption in the Constitution, and the meaning of each is just the same now that it was when the Constitution was formed. Congress has no power to change that meaning, for that would be to change, *pro tanto*, the Constitution. Congress has power to add the forfeiture of property, and make it a part of the punishment for treason. It may do in relation to the property of persons guilty of treason exactly what is imported by the term forfeiture. Blackstone, and all the authors who treat of it, define it to be—

"A punishment annexed by law to some illegal act or negligence in the owner of lands, tenements, hereditaments, or personalty, whereby he loses all his interest therein, and they go to the *party injured* as *recompense* for the wrong which either he alone, or the public with him, hath sustained."

The essential feature of forfeiture is not so much to deprive the one party of the forfeited property as it is to appropriate it to the other as *compensation*. It was once contended in the Supreme Court that the importation of goods into the United States was only to bring them into the country, and did not comprehend their after sale; but that court decided that sale was of the essence of importation and a part of it. Appropriation of the forfeited property to the injured party is no less a *part*, and of the essence of forfeiture; and I challenge my learned friend, the Senator from Michigan, to adduce a single instance of forfeiture or confiscation by legislative action, in this or any other country, where the property forfeited was not so appropriated. The acts of forfeiture and confiscation of the States, in the war of the Revolution, to which he referred us, transferred all the forfeited property to the States severally. Three or four of them were slave States, and the property confiscated by them included slaves, which, alike with all other property, was appropriated to the States. The idea of the forfeiture of property by law, without appropriating it, is one of the mischievous errors of this innovating and reckless age. The provisions of the bill relating to slaves would not come up to the measure of forfeiture, and would be void for incompleteness and imperfection.

Mr. President, I should like to speak from half an hour to an hour longer. I have not concluded

my remarks. I have some, of great importance as I deem, yet to make. I feel a good deal exhausted, as it is my habit to speak vehemently. I would therefore throw myself upon the courtesy of the Senate, and ask that they proceed now to the consideration of some other business and allow me to conclude my remarks (which I promise to make as short as I can) to-morrow.

Mr. SUMNER. If the Senator will give way, I move that the Senate proceed to the consideration of executive business. That will leave the Senator in possession of the floor.

Mr. DAVIS. I thank you, sir.

WEDNESDAY, *April* 23, 1862.

Mr. DAVIS. Mr. President, I have manifested a great deal of interest in the bill which is under consideration, and I have occupied a considerable portion of time in its discussion. I have done so from my deep convictions of the great importance of the measure. In its extent and in the magnitude of material interests involved by it, in its influence upon the present and the future condition of the whole country, if it should become a law and should be carried into effect, and especially upon my own State, in my judgment, it never has had a parallel in any proposition that was ever presented in the Congress of the United States. In the objections to its constitutionality, to its expediency and policy, to its justice and practicability, it is also without any parallel. That I have not overstated or conceived too largely the great interest of this bill, I will read a concluding sentence of the speech made by the honorable chairman of the Committee on the Judiciary, [Mr. TRUMBULL,] who reported it:

"I appeal to Senators as philanthropists, as patriots, as lovers of the Union and of constitutional liberty, not to let pass this opportunity which a wicked rebellion presents of making it the means of giving freedom to millions of the human race, and thereby destroying to a great extent the source and origin of the rebellion, and the only thing which has ever seriously threatened the peace of the Union."

I concluded yesterday, Mr. President, the view of the constitutional objections which I conceived to arise against the measure, and I will sum up that argument now in a sentence or two. Congress has, by the Constitution, expressly the power to make war. Congress has, by the Constitution, every necessary and proper power to carry that express power to make war into execution. Now, sir, what is the effect of these two provisions? The whole war-making power, except so far as is involved the responsibility and the action of the Commander-in-Chief of the armies of the United States and of his subordinates, is exclusively with Congress. Congress, as auxiliary to that primary and express power, has every necessary and incidental power to give it full effect. How are those incidental powers ascertained; how are they put into active operation? In no other form than by the enactment of laws of Congress embodying those powers. The idea of claiming from international law, or from any other body of law outside of the Constitution and the laws of Congress, an auxiliary power to enable Congress to carry on the war, before that power has been invoked by Congress itself and embodied in the passage of a law, to my mind, is perfectly preposterous and absurd.

Congress has power to call out the militia of the United States to suppress insurrection. That is a primary and express power vested by the Constitution in Congress. What powers have Congress in connection with that power and auxiliary to it? It has the power to invoke every other necessary and proper power to carry into complete operation and effect this power to call out the militia to suppress insurrection; but how are those powers to be ascertained and identified? Precisely in the same mode. No power, as incidental to the power to suppress insurrection, can be available or can be brought to the work of suppressing the insurrection until it is embodied by Congress in an act as auxiliary to the main power of suppressing the insurrection. I then reject and condemn as heterodox entirely the principle that would invoke the general war-making power as recognized by international law, or any other law, to assist Congress in suppressing insurrection until Congress itself has adopted that power by the passage of a law for that purpose. Whenever Congress puts itself in that position and asks the agency and the aid of any auxiliary power, the question immediately arises, is that auxiliary power constitutional or not? If, upon the examination of that question, it is found to be in conflict with an express provision of the Constitution, or if it is incompatible with any right that is recognized by the language of the Constitution, there is no other conclusion than that such an act of Congress would be against the Constitution, the paramount law of the land, and would therefore be void.

Mr. President, I will bring to my aid another authority in support of these positions, an authority that ought to challenge the respect of the abolition members of this House at least, and of all the abolition party, in or out of the Senate, in the United States—the authority of Wendell Phillips. I read from the Philadelphia Inquirer:

"One of the most powerful arguments ever made to prove that slavery is sanctioned and protected by the Constitution of the United States was made by Wendell Phillips. It is because that is the law that, to use his own words, he has advised his followers to 'disavow the Constitution' and 'to trample it under foot;' and it is because he fears that the President, General McClellan, and our brave soldiers are now battling to maintain, and not to subvert, that Constitution and the Union under it, that this itinerant mischief-maker and disunionist is so abusive of the President, General McClellan, and the mode in which the war is being conducted. What! say you, did Wendell Phillips ever argue that slavery was legal and constitutional? Yes, good reader, he did, and we mean to ventilate his record of that and of his secession doctrines.

"In or about 1845, one Lysander Spooner wrote an essay to prove that slavery was unconstitutional; and in 1847, Mr. Phillips took up the cudgels to belabor poor Spooner and to convince the anti-slavery public that the institution of slavery was as much protected by the Constitution as anything else. His motive we will presently see. We will briefly state Spooner's objections and the replies of Phillips. His whole argument was published in the Anti-Slavery Standard, and republished, in 1847, by Andrews & Prentiss, No. 11 Devonshire street, Boston.

"SPOONER. Only what is just and right is law; hence slavery, which is neither, is not lawful.

"PHILLIPS. That is false when applied to municipal law; the latter always means the declared will of the nation; hence slavery is lawful, if they have so willed it.

"SPOONER. A judge, or other person holding office under the Constitution, may retain his office, yet treat the Constitution as void."

That is what Gerrit Smith, Greeley, Garrison, and others of that school say:

"PHILLIPS. Not so. When he takes office he looks over

the catalogue of his duties, (namely, the Constitution,) swears he will support it, and thus admits it is moral; otherwise he would be swearing to do what is immoral. Thus he makes a contract with the people, and is perjured if he does not keep it. He should resign his place, and then, *as a man*, treat the laws (namely, the Constitution,) as *void!*"

He has the merit of candor and boldness, if nothing else:

"SPOONER. Each judge may decide for himself what is right and just, and, hence, what is law.

"PHILLIPS. Not so. In that case law would be one thing in Maine and another thing in Maryland; one thing to-day and another thing to-morrow. Then orthodoxy would be *my* doxy; and by *right reason* every one would be willing to mean *his own*. Then follow his citations of legal authorities, and he concludes by affirming 'positive law, then, can so establish even slavery that courts must treat it as legal. The only test to which our courts have any right to submit the action of the Legislature is, to ask is it constitutional?'"

A sounder position was never taken:

"'If so, it is legally binding on them, no matter how unjust or how unreasonable it is. Such is the framework of the Government under which we live.'

"SPOONER. But slavery has never *actually* been established by law in this country."

I wish I had had this argument on the occasion of the debate in this body on the bill to abolish slavery in the District of Columbia. I think I could have used it with some point and force, if not with success, against my honorable friend, the Senator from Minnesota, [Mr. WILKINSON,] and the honorable Senator from Maine, [Mr. MORRILL,] who fathered that measure:

"PHILLIPS. The people who made the Constitution meant by it to protect slavery. To argue otherwise is to attempt 'arguing the nose off one's face.' They meant to protect it by—1. The three fifths slave basis, and that allows slaves to be treated as things, and so not as persons. Yet the South lose by that; for, by the former, the political weight of the master would be *increased* by two fifths, which, by the latter, he loses; and so liberty gains.

"SPOONER. The slave argument wrongly assumes that the word 'free' in this clause is used as the correlative of slavery, and thence it wrongly infers that the words 'all other persons' mean slaves.

"PHILLIPS. The obvious use of the word 'free' is to designate one *not* a slave; hence the Constitution must be confessed to recognize slavery. [Then Phillips proceeded to prove that the true use of that word 'free' is to distinguish such a person from a slave, and, to prove that, he cites authorities from *Magna Charta* to the Declaration of Independence, both inclusive.]

"SPOONER. The word 'importation,' in the slave-trade clause, does not refer to slaves.

"PHILLIPS. It does refer to slaves. It could not mean free white persons, for that would allow Congress, after 1808, to prohibit their arrival altogether—a thing more inconsistent with natural right than the one he (S.) is trying to avoid.

"SPOONER. The so-called fugitive slave clause does not *say slaves*, and it does not mean them.

"PHILLIPS. It does refer to them. The ordinance of 1787 expressly orders the surrender of *slaves*.

"SPOONER. By 'one held to service or labor' is not meant a *slave*.

"PHILLIPS. That *is* its true meaning. Johnson's Dictionary, 1755: slave, one mancipated (bound) to a master. Bondman (*boundman*) is the old and usual English word for slave, and bondage for slavery. It is so used in the Bible. 'Held and holden' are still the popular description of slavery; for we say slave*holder*—slave owner. 'Service' is derived from the Latin word for slave, '*servus*.' Joseph, who was bought and paid for, was called, in King James's translation, 1611, a servant.

"SPOONER. The clause giving power to suppress insurrections does not involve an admission of slavery.

"PHILLIPS. The phrase 'domestic insurrections,' is used in the Declaration of Independence, with reference, it would seem, to slave risings; if so, this use of it would go far to settle its meaning here.

"SPOONER. The Government must be *republican*, but it cannot be a republic if it hold slaves.

"PHILLIPS. The definitions are not so. Mr. Phillips here cites numerous definitions to contradict Spooner, and then adds: 'The Constitution meant by a republic the State governments as they then existed, and twelve of them then held slaves. In the face of such authority as this, as well as the fact that the mass of men in the old republics, from whence we copy the word, (Athens, Sparta, Rome,) were slaves, and that in Holland and Italy, their modern imitators, not one man in a thousand had any share in the Government—who will undertake to say that this word, either in its general sense or as used in our Constitution, has any necessary inconsistency with slavery? Hence it must be presumed that the word "republican," in 1788, did not exclude the idea of slavery. Any other construction makes the public of that day absolute fools.'

"SPOONER. The Constitution made *citizens* of all the people of the United States living in 1789. No citizen can be a slave; hence, negroes, being citizens, are free.

"PHILLIPS. It did not make citizens of *all* the people; not of the Indians. That it was not intended to include slaves under the phrase 'people of the United States,' or to make citizens of them, is evident from the various slave clauses which we have been considering. The truth is, Mr. Spooner perpetually forgets that the United States Constitution has nothing to do with the municipal rights or private relations of men; all these are left to be regulated by the States."

There is not a more important or vital or fundamental principle in our whole complicated system of Government than that enunciated in these clear and strong terms by Wendell Phillips. It will stand as one of the corner stones of the Constitution, the temple of our liberty, until it is rocked and is tottering to its fall. The men who are endeavoring to heave it from the deep foundations of our Government are worse than a blind Samson—trying to overturn the temple of liberty and to bring it down in ruins upon themselves and their common country:

"SPOONER. But even if the Constitution could be applied to slavery, yet there was no slavery *legally* existing in the States in 1789 to which it could be applied, &c. The colonial charters did not authorize it, nor did the English statutes. If it had been tolerated, yet Lord Mansfield's decision in Sommerset's case put an end to it. The Declaration of Independence abolished it, and the Articles of Confederation did not recognize it."

Now let us hear the reply of the powerful logician, Phillips, to that complication of objections:

"PHILLIPS. All these are incorrect. 1. Slave laws are not repugnant to the law of England. When the charters were made, slavery was not illegal. Laws regulating the slave trade were common on the English statute-book till 1807. The charters all legalized the slave trade and slavery, and my friend, William J. Bowditch, Esq., suggests to me that the whole argument on the inconsistency of the slave laws with the charters is unfounded and absurd."

It is equally so in relation to the Constitution. Neither the Declaration of Independence nor the Constitution was ever intended to embrace slaves nor any of the negro race, nor any of the Indian race, nor foreigners. It has been attempted in this argument to apply the prohibitions of the Constitution to foreigners. It no more embraces foreigners than it does quadrupeds. It no more embraces Indians or slaves, except one or two prohibitions that are intended to preserve the humanity of our laws, than it does quadrupeds or wild beasts. The only partners to our political partnership were the white men. The negro was no party, and he cannot now constitutionally be any party to it. He was outside of it at the time the Constitution was formed, and will be forever, to this fundamental law of our Government:

"2. The English statutes recognized it. Mr. Phillips then argues the question at length, and cites, to prove his position, the statutes, 5 George II, cap. 7, 6 Statutes at Large, 74, which render *negroes*, houses, lands, &c., subject to

execution for debts; and 23 George II, cap. 31, A. D. 1750, which speaks of '*negroes or other goods.*'"

This is a progressive age. It seeks to change and abolish not only institutions and property, but language—language fixed by fundamental and constitutional law, as much fixed as the language of Holy Writ itself. Why, sir, the United States Government have sold many slaves. They have had debts and recovered judgments against slaveholders in the slave States, and I have no doubt hundreds and hundreds of cases, by an examination of the records of the slave States, could be found where the judgments in favor of the United States themselves have been made by bringing slaves to the block and selling them as other property. Mr. Phillips continues:

"The Sommerset case admitted the validity of slavery in Virginia, whence Sommerset came."

I wish I had hunted up that famous Sommerset case. The law in England was that slavery was lawful there, and slaves were there held, and were bought and sold as property until the moment that Lord Mansfield delivered that opinion. He himself made that law, and not the British Parliament. Courts often make laws, and here was one of the most important principles made by the dictum of a court. He had no power to render such an opinion. It was a judgment of the court against the law of England, and would have been so decided if the number of slaves in that country had been of sufficient magnitude and interest to authorize those who owned that property to controvert the validity of his judgment.

Mr. SUMNER. Will the Senator allow me to mention that the number of slaves at that moment in England, it is understood, was thirteen thousand? Thirteen thousand were emancipated by his decision.

Mr. DAVIS. What were thirteen thousand slaves in that island at that time? I do not remember its population; but I suppose the population of Great Britain, including Ireland, at that time was twenty millions. What are thirteen thousand slaves to twenty millions of people?

"3. The Sommerset case *admitted* the validity of slavery in Virginia, whence Sommerset came. Mr. Phillips then combats an argument of Dr. Belknap, and adds"—

These are Phillips's words, not mine—

"As to the rest, a more truly Yankee notion than pure love of liberty probably secured them freedom, (viz., certain slaves judicially declared to be free,) for Parsons, C. J."—

One of the ablest lights of the law this country has ever produced, whose decisions shed a broad beam of effulgent light upon every legal question embodied in them—

"says, (4 Massachusetts Reports, 128, A. D. 1808:) 'The defense of the master was faintly made, for such was the temper of the times that a restless, discontented slave was worth little; and when his freedom was obtained, in a course of legal proceedings, the master was not holden for his future support if he became poor.' This (adds Mr. Phillips) was probably why men went through court to free slaves."

This war will, to some extent, introduce that consequence in the United States. That is a legitimate consequence of the war; and let that consequence come in all of its full extent, force, and effect, in depriving the master of his property or deteriorating its value. That is one of the legitimate effects of this rebellion and of this war. If that cause should operate to render worthless the whole slave property of the country, it would be a legitimate result, and the slave owner could not reasonably or properly make any complaint of it. But when Congress travels out of the pale of its powers, tramples upon the Constitution, usurps a power that enables it to absorb the management of the most vital domestic interests of the States for the purpose of striking the manacles from the slaves, to use their vaunting phrase, then the slave owner and every lover of the Constitution has the right to enter his protest against the exercise of such a usurped power. Mr. Phillips continues:

"4. The Declaration of Independence did *not* abolish slavery. The Declaration had *nothing to do* with slavery. That paper 'dissolved the political bonds' that bound the colonies to England, and that was *all it did* or *was intended to do*. No court has ever held it to be the fundamental law of the land."

That is his position. It is no law at all. It is a mere paper giving a public and solemn assertion of certain human rights as those rights were applicable to the white race of the United States, and it ignored wholly the red race and the black race of men that were then in the country.

"No court has ever held it to be the fundamental law of the land."

And no court ever will that has any intelligence, judgment, or sense of what the Constitution and laws of Congress are, in contradistinction to the Declaration of Independence, or any other manifesto that may have been put forth by the Continental Congress.

"On the contrary, it is simply a State paper, a political act, changing the form of Government, and having no relation to individual rights."

It severed the political tie that bound the thirteen colonies to the mother country. It did not regulate, nor was it intended to regulate property. It had no effect whatever upon the rights of individuals as related to their persons or their property, whether property in slaves, in land, or any other subject of property.

"He then cites in proof of that the declaration of John Quincy Adams, and adds: 'Every one knows, and every page of our history proves, that the Declaration was neither intended nor supposed to abolish slavery.'"

A man would have been thought a dreamer, a madman, or an idiot, who would have assumed that position at that time. That is one of the vast, monstrous ideas that have loomed up from the distempered imagination of the present and the immediately preceding generation. It is false in principle; it is false in fact; it is false in all its relations and consequences.

"5. That the Articles of Confederation do not refer to slavery. Mr. Phillips replies: they refer to 'free inhabitants,' meaning those *not* enslaved; and we shall merely remark that any plain reader of them will at once say that they do' (speak of slaves.) Lastly, 'the Constitution of the United States deals with slavery as a *fact*'"—

As an existing fact, as a fact that had existed for two hundred years under the national law of the whole civilized world, and every nation of the civilized world engaged in the traffic of buying and selling slaves, and owning them as property—

"the Constitution of the United States deals with slavery as a fact, and gives it, as such, certain rights."

The judgment of the Supreme Court of the United States in the case of Prigg *vs.* the Common-

wealth of Pennsylvania rendered by Justice Story, decided that the owner of a slave had a right to pursue him into any State of the United States, even where slavery was proscribed and abolished by the laws of that State, and then and there to seize and reclaim his slave if he could do so without a breach of the peace; that he had the same right to recapture his slave that he had to recapture his horse or any other property; that he had a right to retake it wherever he found it, and in that way to assert his right and his dominion over it, so as not to make a breach of the peace; and that principle was as legally and legitimately applicable to a slave as to a horse or any other property. Yet, in this day, at this very session, we have passed laws that throw obstacles in the way and that practically prevent the master of a slave, although he be a loyal man, from exercising that right which the Supreme Court by the concurrence of all its judges and by the judgment of that enlightened jurist, himself an anti-slavery man, Justice Story, decided the slaveholder had the right to exercise wherever he could in any free State, although slavery might be prohibited in that State by its constitution and laws. But I will continue the reading of this extract:

"Such, then, is a very brief but accurate outline of the extraordinary argument of Wendell Phillips in favor of the legality of slavery, by the common law of England, by the common law and charters of all the colonies recognized by the Articles of Confederation, expressly protected by the Constitution of the United States, and not in the slightest degree impugned by the Declaration of Independence!"

If those gentlemen, who have their ears, their minds, and their hearts so wide open to receive the mischievous errors, heresies, and dangerous untruths that Wendell Phillips is promulging through this land, would just open those organs to those great and important truths that he has told with a force that no man can controvert, it would be much better for the peace and the tranquillity of the country.

"But why did Wendell Phillips make it? Was it because he loved slavery? Not at all. It was because he hated and determined to destroy the Constitution of the United States."

And for what purpose? To effect the destruction of slavery. He had constituted himself the great advocate and propagandist of the freedom of the black race in this country. He boldly and recklessly entered the lists to effect that work, and to bring it to a successful issue. He declared that he was willing to walk over the ruins of the Constitution itself to effect that object; and that is what his followers are now attempting to do, not in his bold, courageous, and manly manner, but by skulking under false pretenses.

"But why did Wendell Phillips make it; was it because he loved slavery? Not at all. It was because he hated and determined to destroy the *Constitution of the United States!* He admitted that the Constitution so protected the rights of southern men that they could not be argued away. Hence, in the same essay, he says: 'The people have seldom regained their freedom by finding a loose joint in the harness of their tyrants. No, it has usually been necessary to *trample armor* (the Constitution) *and armor-wearer in the dust.*'"—Page 86.

Yes, sir, he admits that slaves are property; he admits that the rights of the slaveholder are protected by the Constitution; he admits that the Constitution has no joint or break, no weak place in it that permits slave property to be successfully assailed; and the only way by which it can be successfully assailed is by trampling both armor and armor-wearer, the independent and conscientious officers of the law sworn to support the Constitution, and supporting it in truth, under the feet of the assailants; and there is no other mode of effecting the object.

Mr. President, I am no advocate of slavery in the abstract. If my will could remove the slaves from the United States to-morrow, every one of them should go. If my will could place in my own State in operation a system of gradual emancipation that would take about three generations to consummate it, I would not hesitate to adopt it. But this matter of slavery belongs to the States themselves and to their people. The free States have no more right to force the emancipation of slaves upon the slave States than the latter have to enforce slavery upon the North. Suppose, sir, that the men of the South, which was once the dominating power in this Union and in this Government, in the arrogance of their nature, in the intoxication produced by the possession of power, had attempted, by a series of similar measures to those which have been originated at the present session, and have been so perseveringly pushed forward, to force upon Massachusetts and New Hampshire, and all the free States, the institution of slavery; suppose that they had had the power in the two Houses of Congress to pass bills to that effect; would the free, stalwart, brave, and invincible true men of the free States ever have submitted to such an interference with their domestic concerns, to the exercise of such an oppressive power of the Federal Government, in denial of a right assured to them by every feature and every principle of our Constitution, and of our complicated form of Government? No, sir; no.

But Mr. Phillips says again, "the only way their sons," speaking of the framers of the Constitution, "can free themselves is to disown their fathers' act, the Constitution itself."

If gentlemen intend to do that practically, let them do it by open and bold declaration as well as by deed; do not let them do it furtively; do not let them do it by indirection; let them do it as the reckless Phillips himself proclaimed that he would do it.

"The only way their sons can free themselves is to disown their fathers' act, the Constitution itself. The only path to such release is over the Constitution, trampling it under foot, not under it trying to evade its fair meaning."

Sir, this apostle of negro freedom, in defiance of the Constitution, declares his willingness to overturn that instrument to achieve the result at which he aims. This argument in favor of the constitutional rights of the slaveholders and against the policy and measures that the party now in power have originated in both Houses of Congress, none of them can answer successfully.

But, sir, a change has come over the spirit of Mr. Phillips's dream, and what has produced that change? He thinks he has found his own party in power, in the possession of the executive and the legislative branches of the Government; or if his own party are not in power, they have such skillful, dexterous, able, and unscrupulous leaders here that they can cajole the simple, moderate, conservative, constitutional Republicans into their extreme measures, and I expect that he relies very

much upon the two Senators now in my eye, one from Massachusetts, [Mr. SUMNER,] and one from New Hampshire, [Mr. HALE.] What does he now say? Mr. Phillips was arguing recently in this city. ["Did you see him?"] I hold no fellowship with him. I disdain to know any such man. Any man who audaciously avows himself a traitor to the Constitution, and is willing to subvert it for the purpose of achieving the emancipation of the slaves, or of dismembering the southern States and establishing a southern confederacy, or for any other purpose under God's heaven, I condemn and denounce. He is a traitor, and his heart is filled with nothing but treason and treasonable projects; he ought so to be treated; and when that man Wendell Phillips was here in this city lecturing as he did lecture, he ought to have been seized by the President or the Secretary of War and manacled and confined at Fort Warren or Fort Hamilton. He was a much more wicked, mischievous, and dangerous man than many who were so treated. What did he say in his lecture here in Washington?

"Now, I love the Constitution, though my friend, (Dr. Pierpont,) who sits beside me, has heard me curse it a hundred times, and I shall again, if it does not mean justice."

Oh, it is to receive a new interpretation! I adhere to the old political bible, and to its interpretation by its apostles and the Supreme Court, and I deny and condemn utterly any of your modern jesuitical interpretations of it.

"I have labored nineteen years to take nineteen States out of this Union;"—

Oh, what a labor!—

"and if I have spent any nineteen years to the satisfaction of my Puritan conscience, it was those nineteen years."

May the Lord deliver this country from any such accursed Puritan conscience as that!

"Unless within twelve months or twenty-four, Maryland is a free State, Delaware, and half Virginia, would to God that building"—

referring to the Capitol—

"with the city of Washington, had been shelled to ashes last July."

What an atrocious sentiment! Suppose a secesh was to come into this capital or to go to Cincinnati, and was to take such a diabolical position as that, would not the whole world of Black Republicanism and of Constitutional Republicanism, and of Unionism of every name or grade or dye, without any exception, have risen in condemnation of the miscreant who dared to give utterance to such a sentiment?

Speaking of the origin of the rebellion, Phillips declares that "it was nobody's fault, but that it is the inevitable results of the seeds our fathers planted seventy years ago." And in another place he says of the fathers of the Republic, "they dared not trust in God."

Referring to William Lloyd Garrison, the inveterate disunionist, who kept standing time out of mind at the head of his paper the sentiment that the men who had framed the Constitution had made "an agreement with death and a covenant with hell," he characterized him as "a man who had done more in the providence of God to shape the fate of this nation than any other one;" and that he (Phillips) "was proud to sit at his (Garrison's) feet." I wish he was sitting there, and would sit there forever, and that they were both in the very central point of the peninsula of Africa. It would be better for the peace of the country that they and all their admirers and proselytes occupied that locality.

Mr. President, I said that I was no advocate for slavery; but I will say a word in relation to slavery and its history. We have a sacred and a profane history running back between three thousand five hundred and four thousand years; and in all of that long tract of time up to the present moment, there never has been a day in the history of man that slavery did not exist by the thralldom of one man to another. From the time of the father of the faithful, when he took up his pilgrimage from Mesopotamia to the land of Canaan, where he had been directed by the command of his God, up to this day, there never has been a time when slavery did not exist in the world; and gentlemen cannot disprove that position. When, through the inscrutable mercy and providence of God, His Son visited the earth as a Messiah, what then was the condition of the Roman empire? There were within its broad and ample limits at least fifty millions of slaves. Those slaves were then bowed down by a yoke more weighty and galling than any that now exists. He was in the midst of a slaveholding population, and He taught men in relation to the subjects of sin, crime, and moral duty, and He was followed by His apostles, and His apostles pursued the line of the same teaching under His inscrutable inspiration; and we find the greatest and wisest of those apostles, Paul himself, directing and commanding one of his disciples to return a fugitive slave to his master. My learned and able friend, the Senator from New Hampshire, [Mr. HALE,] is deeply versed in the Scriptures; I am not, and I speak it to my shame; I wish it were otherwise; but I challenge him to produce me a word uttered by the Saviour of mankind in His mission upon earth, or by any of His apostles, where He condemned slavery as a crime or a sin by name. On the contrary, He taught the mutual duties of master and slave—humane treatment on the part of the master, and obedience on the part of the slave.

Why, sir, after the Norman conqueror won the battle of Hastings, and struck down common-law liberty in England, what became of the Saxon race? Many of them had brass collars put around their necks, with their masters' names written upon them. In the Roman empire the master had not only the power to sell his slave, but to take his life without committing any crime or subjecting himself to any punishment. That was the condition of the polity of Rome for a considerable number of years.

Mr. HALE. The Senator has appealed to me for an answer to a question which he put. I do not pretend to be deeply versed in Scripture, but I have a text in my mind that I think hits his case.

Mr. DAVIS. Let us have it.

Mr. HALE. It is this: "And the times of this ignorance God winked at; but now commandeth all men everywhere to repent."

Mr. DAVIS. I hope that for all the sins against the Constitution and the peace of the country that have been heaping upon the honorable Senator's head for twenty years, the work of repentance in sackcloth and ashes with him will soon commence and produce its fruits; but I believe he is rather a

hardened sinner, and I am afraid his case is hopeless. [Laughter.]

Well now, Mr. President, what do these liberal gentlemen propose to do, and how do they talk in relation to slavery and the negroes after they shall have been emancipated? An honorable Senator from Delaware [Mr. SAULSBURY] proposed that the free States should take all the slaves that they propose to free, and immediately the whole hive was in a buzz, and every man rose up in indignant protest against any such atrocious measure. The Senator from New Hampshire, in a speech which he made touching the subject some days ago, probably on the District bill—I do not recollect the precise question before the Senate at the time—indulged himself in the expression of vehement indignation because of some remarks that I had made. I had said, and I say now, that the slaves of the southern States can never be free in their present numbers without producing one of four consequences. One is, that the people of those States would immediately enslave the negroes again by their laws; and if any such measure as this were attempted in my own State, although I am opposed to slavery, and, in the immortal language of the great statesman of Ashland, no power on earth should ever induce me to carry slavery into any country where it does not exist, yet believing that slavery would thus be destroyed in my native State by the usurpation of an unconstitutional power, I would seek to obviate and neutralize the act by every means and force that I could command. If that consequence did not follow, the slaves would be driven into the free States, or into the country south of the slave States; or if that consequence did not follow, there would be a cruel, exterminating, and savage war between the two races, that would result in the total destruction of the inferior race. And if that did not follow, the inferior race would obtain the mastery, and they would drive the white population from the country, or the white population would abandon it. I was rebuked sternly by an honorable Senator from Massachusetts [Mr. WILSON] because I took these positions, and he charged me with making threats. I did not intend them as threats. I intended to state them as truths. I spoke of a subject of which I have knowledge, because I have lived in its presence all my lifetime, and know all its relations and bearings. If I were to presume to understand the subjects of commerce, of manufactures, of the art of war and military affairs in general, of navigation, and of the fisheries, as the honorable Senator from Massachusetts and many other gentlemen here do, and were to assume that I had as much knowledge upon those subjects, and as much power and capacity to advise in relation to them as they have, I should regard it as great arrogance on my part. But, sir, I am now speaking of a subject familiar to me, which I have been learning from my earliest childhood to the present day, which I have seen in all its phases and in all its relations. If men here who claim to be philanthropists and patriots would have the good sense to take counsel and advice, not of me, but of wise and moderate and safe men from the border slave States, in relation to this subject, in all its bearings, in my judgment they would act more wisely than they do. The general course of this Senate upon all other subjects I greatly approve. The general course of the honorable Senator from New Hampshire, whose acquaintance it has been my good fortune to have had for many years, with the deepest and sincerest personal regard and friendship for him, I approve upon every other subject in the main at the present session. So of the Senators from Massachusetts.

The author of the bill assumes, Mr. President, and truly, that the subject of slavery is the great apple of discord among the American States and people. It gave more trouble to the wise, patriotic, and good men who framed our Constitution than any and all other subjects; but how then was it adjusted, treated and settled? In a spirit of concession and compromise. In no other spirit could the Constitution ever have been adopted or ratified. If the Constitution is to be preserved and perpetuated, Congress and the dominant party must again return to that spirit of concession and compromise which animated and inspired our fathers when they gave this immortal system of government not only to our country, but to the human race.

We understand from all the Senators here, from the unanimous vote by which the proposition of the Senator from Delaware, to which I have referred, was rejected, from the declarations of various Senators from the free States, from the provisions being introduced into the constitutions and laws of the free States for the utter occlusion of negroes from those States, that no free State is willing to have a large number of resident free negroes within its boundaries. If I am allowed to say it, I will say that I know that the free negro population in the State of Kentucky is by far the worst population we have. But gentlemen are not allowed to state positions here embodying their own knowledge of slavery; they are not allowed to get up and contend for their legal and constitutional right to their slaves. There is a spirit of denunciation and browbeating on this subject in the Senate which I have never seen equaled since I used to witness the ravings of Wise in the House of Representatives. I do not denounce or condemn Massachusetts for her free institutions. It is a matter that belongs to her. No slave State that I have any knowledge of has ever meddled or interfered with the domestic institutions of the free States. It was not their province to do so. It would have been mischievous and unfraternal intermeddling to have done so. They were entitled to the same rules of reciprocity and justice from the free States. If those rules of forbearance, of brotherhood, of reciprocity and justice had been scrupulously practiced by the people of the free States towards the slave States, the present great and overwhelming calamity never, never, in my judgment, would have come upon the country. I believe that that is the true origin of it. But, sir, I will now present a few facts to the honorable Senator from New Hampshire, which I have in a table before me. The States that press the abrogation of slavery and a disregard of the interests of the slaveholder most in the Senate are the States of Massachusetts and New Hampshire.

Mr. HALE. I did not hear that.

Mr. DAVIS. I say that the most vigorous and relentless attack upon slavery and the constitutional rights of slaveholders in the Senate of the United States, that comes from any quarter comes

from the States of Massachusetts and New Hampshire. A few days ago when, in speaking of the number of free negroes in Maryland, the eloquent Senator from that State, who has a stoppage in his speech, but whose ideas flow along in unbroken majesty and truth, was giving utterance to his feelings and opinions on this subject, the honorable Senator from New Hampshire got up and chided the people of Maryland for having manumitted their slaves, and thereby having so many free negroes among them. [Mr. HALE. Oh, no.] He asked, "was it not their act?" and he said, "yes it was their act." If he did not condemn that act, why did he chide them for it? If the act is proper, humane, benevolent, wise, and statesmanlike to emancipate all the slaves, and their emancipation becomes a local burden upon the States where they now reside and where they would be emancipated, why are you not willing, all of you, to take your share of that burden? Now, for a few moments, let us see how that would operate. I will begin with the State of California. California has a good many free negroes. I suppose the most of them were taken there as slaves before her constitution was made; and when California adopted a constitution excluding slavery, I became perfectly satisfied that there never would or could possibly be another slave State on this side of the cotton region, and I did not lament the conviction to which my mind had come.

In this connection I will say that all this fuss and disturbance about excluding slavery from the Territories of the United States, or permitting the immigration and settlement of slaveholders into those Territories, has been, in my opinion, the most idle, foolish, and mischievous dispute, short of that which now agitates Congress, that ever did disturb any people. As a pro-slavery man, I would not have given a copper for all the protection which the legislation of Congress or of Territorial Councils or Legislatures could have afforded to slavery or to slaveholders in the Territories. Those laws would have been *brutum fulmen;* they would have fallen without the least operation; they had been negatived and vetoed by a higher law, the law coming from the eternal judgment seat that established the climate, soil, and productions of the country. The last Congress might have passed any laws they pleased to admit slavery into Nebraska or Kansas or any of the Territories we now have, and such a law would not have been of the least practical consequence, because it could have produced no result whatever.

Is not that proved by the condition of New Mexico? Her Territorial Legislature adopted a slave code and laws for the protection of slavery stronger and more stringent than those that prevail in my own State; and yet by the authority of the able representative we now have at the Court of St. James, in a speech delivered in the House of Representatives, when he was a member of that body, there were only twenty-five slaves in the whole Territory, and fifteen of them, if I recollect aright, belonged to officers of the Army who had temporarily taken them there. At the close of the last Congress there was not a foot of the public territory of the United States but what was open to the emigration and settlement of slaveholders; and who ever heard of a slaveholder taking his slaves to any of these Territories? If any were so foolish, they took them there, having any sensible purpose, with a view to have their present services, but at no remote time their certain emancipation. Property does not seek hazards except upon the seas. I once heard of a Dutch merchant who—when Holland was the greatest maritime Power upon the earth, when her sails whitened every sea, and she had possession of a great many distant colonies away in Eastern Asia, and her crowding commerce was drawing by their argosies returns from all the ports of the world—an enterprising Holland shipper—said that he would sail in the pursuit of his commerce even through hell itself, at the risk of scorching his sails. But in relation to slave property slaveholders are distrustful, they are timid, they never will take them to local positions where their right to their slaves is liable to be attacked. They never did, and never will. I myself never wanted another slave State short of the cotton region. I do not now. For you men of Congress and of the nation who assumed the position that you would protect the slave States and slave owners in their constitutional rights, but that you would give them no more facilities and would never consent to the admission of another slave State into the Union, I have no word of condemnation. If you will just act upon that policy now, having achieved emancipation in this District, the country, the mass of the reasonable and intelligent men of the South, would become satisfied to accept your compromise upon such a platform.

But I will proceed with my table. California has 3,816 free negroes. How many would she have to take if all the negroes were liberated and if they were then distributed equally among the States? Her ratio would be 56,003. She is not prepared, I reckon, for such an importation of free negroes. Connecticut, the land of steady habits, among the noblest of the Old Thirteen, in whose men, in whose statesmanship, in whose love of country, in whose valor, in whose performance of all their duties as men and citizens, with such exceptions only as appertain to all frail men, I have the highest confidence, what would be her condition? She has now 8,542 free negroes, and she would have to take 65,733. Illinois now has 7,069. You found that both the Senators from Illinois were a little tender-footed on the subject, and well they might be, for her portion would be 244,536 free negroes. Next I come to Indiana; and what would be her portion? She has a goodly number now, comparatively. She has 10,869, and her portion would be 192,991, an increase making nearly 200,000. The young and growing State of Iowa, that has become an empire in the Northwest, and, according to my information, has more of fertile and productive and less of refuse land than any State in the Union, how many of these slaves would she have to take? She now has 1,023 free negroes. She would have to take 96,421. Kansas has 623. She would have to take 15,301. I wish Kansas had every one of them. [Laughter.] Maine is pretty strong upon the bit on this slavery question. My honored friend, the late Governor of that State and now Senator, [Mr. MORRILL,] is not in his seat. I am sorry that he is not; but in his presence or absence I never would treat him with the least disrespect. My feelings are too strongly and deeply and sincerely of an opposite character. Maine has 1,195 free negroes. Under this apportionment, she would have to take 89,753.

Massachusetts has 9,454. She would have to take 175,866. I wish she had her full quota; [laughter;] and I believe that, instead of sending them all to Kansas, I would send at least half to Massachusetts, and if the Kansas Senators protested, I would send the whole of them to Massachusetts. Michigan, the State of my early and honored friend, [Mr. HOWARD,] has now 6,823. She would have to take 121,301. My friend has a good deal of aversion to the Indians resident in his State; I have no doubt this is a very reasonable and well-founded aversion, but it is not half as well or as deeply founded as our aversion to free negroes in Kentucky. I wish I could excite a little more of sympathy in his generous bosom on what I may call our subject, than he at present feels.

Mr. HOWARD. Canada is very near us, and affords a fine market for "wool."

Mr. DAVIS. And I believe they starve and freeze to death there in the long winters. I have received a doleful account of them there. I believe they form them into regiments, and ship them to the West Indies occasionally. Here is Minnesota one of the youngest sisters. She has only 229 free negroes now. She would have to take 24,574. That would be considerable increase. New Hampshire has 450. She has not her *pro rata* of the present free negroes. She would have to take 46,581; and I wish from the bottom of my heart that she had the whole of them this day. New Jersey is very liberal, more so than any of the States except Maryland, in proportion to population. She has 24,947 now; and she would have to add to her numbers until they reached 96,007. Then there is New York, the Empire State, whose broadside once used to decide all presidential elections; I believe that the great West are rather dividing that power with her now. What is her number? She has now 49,005. How many would she have to take? Upwards of 500,000 more than she has—557,390. Where are the Senators from New York that we cannot make a compact with them just to lead that number of free negroes into the Empire State right at once. Then here is Ohio, the eldest sister of the Northwest, and the strongest one yet. She has 36,225; and she is the Botany Bay for the negroes from Kentucky and Tennessee. Every man there who wants to liberate his slaves takes them to Ohio, buys land there, and settles them on those lands. The reason is that Illinois and Indiana, and the other northwestern States, frown upon that policy; but Ohio still opens her bosom to the reception of that people, and I hope in God she will receive her surfeit before a great while. She now has 36,225. She would have to take 334,304. Oregon has 121. She is so distant they will not travel there. They are too indolent to travel that far. She would have to take 7,509. Pennsylvania has 56,376. A good many of them, I believe, were made free by the running of the line between Pennsylvania and Virginia at an early day, a great many people claiming part of Pennsylvania as part of Virginia, and taking slaves there. She would have to take 423,767. Rhode Island has 3,918; she would have to take 24,717. Vermont has 582. I do not think, with due respect to the Chair, she has quite her *pro rata*. She would have to take only 45,016. Wisconsin has 1,481. She would have to take 112,267.

Well, now, what may be the effect of this bill? I am not against forfeiture. I want the property of incorrigible traitors forfeited, and their lives, too. I want them to pay that expiation to the violated Constitution and laws of their country for this wicked and causeless rebellion; but I want a legal and a constitutional and a humane forfeiture. This forfeiture may operate to the disenthralling of 3,500,000 negroes. It is only necessary to state the proposition that it may strike every man's mind as true, whether he has practical observation and experience on the subject or not, that it is utterly impossible, in the cotton States especially, for the negro population and the white population to remain and live together, both being free. As the honorable Senator from Illinois [Mr. BROWNING] said, it would not only be almost better, but it would be better altogether, if the two races are to remain, that the black race should be in a state of slavery, and that the whites should have the mastery. Why, Mr. President, that great law of society, of mankind, that established slavery in the dawn of history, and that has continued it to the present time, will continue and perpetuate it as long as man lives in a state of society. The present form of slavery may be broken up and may be abolished; it probably will be; but it will spring up as a great social necessity in some other form, especially in the tropical countries.

And here permit me to make a general remark in relation to tropical countries. As a general rule, all labor is involuntary. I never knew a man in my life, or with very rare exceptions, that would toil and sweat and labor and fatigue himself in doors and out of doors, in the colds of winter and the heats of summer, in storm and in sunshine, voluntarily. It may be the result of the primal curse of Heaven, "In the sweat of thy face shalt thou eat bread." It is the result of his organization; and in the South that is especially the law of man, be he the black or the white man; and why is it so? In the South, many productions that subsist life are spontaneous. There are fruits and vegetables upon which the indolent people who inhabit the tropics can live without manual labor, and so long as they can do it they will never go under a tropical, burning, scorching sun, and encounter the heats of noonday and the dews of night and morning, and labor in their fields for the production of tropical products, to any considerable extent. Labor in the tropics, to be available and greatly remunerative, must, necessarily, be compulsory labor. It will never be of any other character; it never has been and never will be. In the island of Cuba there is more prosperity than in the other islands. Why? Because involuntary slavery of the negro still exists there. Go to Brazil; it exists in Brazil; and of all the Governments and countries that were peopled and founded by Portugal or Spain, Brazil, at the present time, is the most flourishing, the most happy; its labor is most productive.

The great element of national power and of human progress is labor. If there is anything on God's earth which, next to Christianity, truth, and virtue, I admire and revere, it is labor. It is labor that has brought man from the savage state to be, in truth, the image of his Maker, by his present civilization in Christian countries. For the tropics to be productive, they must have labor; that labor must be involuntary, and it must be the involuntary labor of the negro race, for two rea-

sons: first, they are the inferior race; and second, the climate of the tropics and the labor of the field in the tropics are more congenial to the negro constitution than they are to the white. They can endure a greater amount of it; they can make it more productive, more remunerative. Those are mere abstract opinions of mine, and I deduce no conclusions from them; but I speak of results necessary from the organization of man and his existence in society. If in our country, or any other country, there are to be slaves, I, for one, want those slaves to be of the negro rather than the white race. As to the equality of the races and bringing them up to our level in this country, it is all a chimera, a dream. There is Africa, a great part of it populated by the negro race. It has about eighty millions of the true negro race; it has five millions of square miles of territory; it was populated next to Asia in point of time. In that vast peninsular continent, with such a myriad of people, that race has never risen to any considerable degree of civilization. Why? It is because by their natural organization they are incapable of marching forward and upward to the point of high civilization. They never have; they never will. I want the colonization experiment tried; but if Liberia had not been upheld, protected, and guided by the mind, the energy, and the arms of the white men, all the immigrants there would have degenerated into barbarism and would have mingled with the savage and pagan hordes who surround them. The British West India Islands now are not so productive, by from three to five times, as they were in a state of slavery; but what little efficient industry, and what little amount of production they now have is owing to the fact that they are British possessions; that they receive what little knowledge and skill in cultivation they have from the mind of the white man. If the rule of the white man was expelled from those islands, in a few short years they would sink into unproductive barbarism.

Mr. President, I do not presume to interpret the will of God, either as spoken through His revealed Word or by His vast and wonderful works of creation, upon the subject of slavery. It is far above my ken. I receive it as the Constitution received it, and as I believe the Saviour of the world and His apostles received it, as an existing fact. It has existed for thirty-seven hundred years. That is some evidence that it is tolerated by the omniscient and gracious Ruler of the universe, who permits not a sparrow to fall without His notice. It has been built up by man; it has existed widely over the face of the earth in all the most civilized countries. It will exist, I will utter as a prediction—and I am rash for making any prediction upon the subject—it will exist in some form or other as long as man lives in a state of society. But, Mr. President, there are some men so conceited, so fool-hardy, so audacious and impious, as to claim to penetrate and know the secret will and purposes of the Great Jehovah in relation to this subject, and who daringly utter this profane language, "if the God of heaven and earth tolerates slavery, He is not my God; if His revealed word tolerates slavery, if the Bible tolerates slavery, it is not my Bible." Sir, could there be deeper or more execrable impiety; or do these vain and silly men know all the secret purposes of the Omniscient? How dare they attempt to penetrate His inscrutable and awful arcana? When I, in my closet by myself, in the solitude of the night, in the depths of my humility, seek to obtain the immediate presence of the Great Jehovah, it is with an amount of reverence and wonder and awe that overpowers me; and for these daring and impious men to be seeking impiously to make themselves the interpreters of His will, outside of and beyond His revealed word and His great works of creation, is the greatest amount of wickedness and audacity, in my judgment, that can be exhibited by man.

That incomprehensible Being and Power has spread abroad into an infinity of space His wonderful creations. We occupy one of the smallest planets in our system; there is a planet belonging to our system that requires about one hundred years to perform its revolution—a greater time than any of those wretches live on the face of the earth; and yet this is but one of the millions of systems that are upheld by His omnipotent power and wisdom, and that are harmoniously executing their laws, which He enacted, throughout the enduring years of time. That the great Being who created and upholds such vast and incomprehensible systems permits and knows of the existence of the evil wretches that are thus seeking to interpret His will, in my judgment, is one of the most satisfactory evidences of the omniscience and of the omnipresence of the Great Eternal. That they are not lost in His boundless dominion in their utter insignificance, but that He sees them to-day and forever, is to me a convincing evidence of His omniscience and of His omnipresence; and that he permits such wretches, after the utterance of such impious sentiments, to live, is another evidence of His all-pervading mercy and goodness. I repudiate all their teachings. I take the revealed Word of God as it is. I take his visible creations as they are. I apply my feeble and dim reason to the interpretation of His will as it is thus spoken, and beyond that I dare not attempt to look into the awful mystery. He has tolerated slavery for three thousand seven hundred years. It will always exist in some form or other; and in His own time, when He wills it, He will bring it to its termination. He may close it in its present form speedily. The judgment of the world, I admit, is against slavery in its present form. It is in process of execution. If that execution can go on slowly, gradually, imperceptibly, as all the great processes of nature to be beneficent and productive of good must, I have no objection to its execution. But this rash, empyrical execution that anticipates beforehand the judgment of God, and seek as His chosen instruments themselves to become the executioners of His judgment, I protest against totally.

But, Mr. President, it is sufficient to us that, in the language of Phillips, the Constitution and the law have written our right to our slaves. We claim that Constitution as the law that secures our right to that property.

Sir, I shall detain the Senate only a few minutes longer; but before I close, I will say a word or two more. The President of the United States and the Senate and the House of Representatives have pledged their honor, their faith, and their word upon this subject. I will read the resolution passed in July last:

"*Resolved by the House of Representatives of the Congress of the United States*, That the present deplorable civil

war has been forced upon the country by the disunionists of the southern States now in arms against the constitutional Government and in arms around the capital;"—

that is all true, every word of it—

"that in this national emergency, Congress, banishing all feelings of mere passion or resentment, will recollect only its duty to the whole country; that this war is not waged on their part in any spirit of oppression, or for any purpose of conquest or subjugation, or purpose of overthrowing or interfering with the rights or established institutions of those States, but to defend and maintain the *supremacy* of the Constitution, and to preserve the Union with all the dignity, equality, and rights of the several States unimpaired; and that as soon as these objects are accomplished the war ought to cease."—*Journal House of Representatives*, first session Thirty-Seventh Congress, p. 123.

That resolution passed the House of Representatives with but two dissenting voices. In this body the vote of my friend, the honorable Senator from Illinois, [Mr. TRUMBULL,] was against it. The vote of one of the Senators from Massachusetts was not cast. The vote of the other, the chairman of the Committee on Military Affairs, [Mr. WILSON,] was in its favor. All the other Republican Senators who were then present and in this Chamber, stand committed by that solemn pledge of record to abide by the principles of that resolution; and if they do that, the Union men of Kentucky and of the border States ask nothing further at their hands. The President in his inaugural address said:

"I have no purpose, directly or indirectly, to interfere with the institution of slavery in the States where it exists."

There, sir, is the solemn pledge of the man who is now the chief executive power of this nation—a man, I believe, of good faith. He says further:

"I believe t have no lawful right to do so, and I have no inclination to do so."

And in his annual message in July last, he said:

"Lest there be some uneasiness in the minds of candid men as to what is the course of the Government towards the southern States, after the rebellion shall have been suppressed, the Executive deems it proper to say it will be his purpose then, as ever, to be guided by the Constitution and the laws; and that he will probably have no different understanding of the powers and duties of the Federal Government relating to the rights of the States and the people under the Constitution, than that expressed in the inaugural address."

And to the same purpose and in fewer words a resolution was passed in the House of Representatives unanimously. When were those resolutions passed in the two Houses? When did the honorable, patriotic men constituting the two Houses of Congress—the most august and powerful legislative body upon earth next to the British Parliament, for that claims to be omnipotent—give that solemn pledge? It was on the 25th day of July, if I recollect aright, three or four days after the disastrous defeat and rout at Bull Run. The Republican party had then been inaugurated in power, but it was in those dark days that it gave that pledge. It was uncertain what position the border States would take; and I say, now, if the programme of measures which has been presented and passed by the present Congress—I speak of these propositions as a whole, an entirety, with all their provisions and all their principles—had been presented to the consideration of Congress before or after the battle of Bull Run, the people of the slave States would have come unanimously to the conclusion that the party lately installed in power—the Republican party—did intend to make the war upon slavery. They denied it. Your President denied it. Both Houses of Congress, with unparalleled unanimity, denied it. They denied it after the great disaster to their arms. Your President denied it in his communication to General Frémont.

Sir, suppose these border States—little Delaware, Maryland, Western Virginia, Kentucky, Western Tennessee, and Missouri had all been united, as were South Carolina and the cotton States, against the Government, and you had made the border States the theater of war, as it would have become the theater of war, what additional force would you have had to oppose the reconstruction of the Government and of the Union? You would have had fully two hundred and fifty thousand more men in the field—not braver or better or truer men in battle than the northwestern men, but their equals. With such an increase of power to the confederate arms, where, then, would have been your Union? That was the imposing condition of circumstances that brought Congress and the President to these pledges.

What were those pledges made for? What were they made by the President for? What were they made by the two Houses of Congress for? Were they to be kept in good faith, as they should be by honest, true, and patriotic men, or were they made that they might deceive and betray? Had they any purpose at that time of violating this pledge? Did they make the pledge to the ear that they might break it to the hope? I believe no such monstrous proposition as that. I believe they made it as faithful and true men. I ask them to redeem that pledge in the spirit in which it was given. If they do, all will go well; but if they do not, I tell you, sir, that this war has only begun. The Union never can be restored and it never can continue except upon the great principle of the inviolability of the Constitution and a recognition practically as well as theoretically of the constitutional right of the States respectively, and especially of the slave States, to manage their own domestic concerns. That is an essential principle of American liberty, and it is as important and as necessary a pillar to sustain the American system as is the supremacy of the General Government itself within the sphere of its powers. The prostration of either the constitutional power of the General Government or the reserved rights of the States would be equally fatal to the great American system. The people are pledged to its support, and to uphold it. It was so construeted by Washington and his compeers. They have lived under its protection and guidance. Their hearts and their minds are given to it with a devotion second only to their devotion to their religion. They intend to adhere to that Constitution. They will fight all who assail or attack it and threaten its overthrow, they care not whether they come from the North or the South. I speak of the Union men of the border States. They would regard the subjugation of the military power of the rebel States as no blessing if it is to be won by the sacrifice of the Constitution. If they are to transfer directly or by indirection, by questionable incidental power, their right, which they never parted with, to have slavery or freedom as they will, and to regulate all of their other domestic policy, if that is to be the condition which this party in power intends to exact from them, they will never

submit to it, and I here avow it as one of their representatives.

If the war is to be made in that form, proclaim it. You may overwhelm us, you may conquer us, but you will never subdue us. But I tell you, sir, that the people of the United States and the Army of the United States will never enter upon such a crusade as that. Three fourths of that noble and gallant Army that are now in the field are as much devoted to the Constitution and to all the rights of American citizens as I am. They will oppose you and all others who attack it stealthily and indirectly. They will overthrow you. You are now like the Assyrian king, reveling in your halls of power, intoxicated by its possession, dreaming of its perpetuity and all the good that it is to bring to you; but before you know it, if you proceed on your present course of policy, your doom will be written upon the wall, as it was against that ancient tyrant.

I want this war brought to a close in the field. We want this work done; we want it done that we may not have two wars upon the Constitution at once. The war of the abolitionists in the Senate and in the House of Representatives and out of Congress upon the Constitution is as much a war as that of Jeff Davis and his confederate hosts. We are equally the enemies of both. We want to dispose of one war, that we may be engaged singly with the other. We want the rebels subdued that we may then commence an equally successful and triumphant war upon the abolition party, who are trying to immolate the Constitution to their theories.

Mr. President, I have prepared a measure which, if I have a chance—I do not know that I shall—I will offer as a substitute for this bill. I propose confiscation, and I propose it in a practical form. The honorable Senator from Minnesota thought I was trying to benefit Kentucky in the proposition I make, and that I was somewhat selfish and sectional by making it for the benefit of Kentucky and the other border slave States; but the idea did not originate with me. I derived it from a former Senator in this body and a former member of the House of Representatives from Connecticut. He presented me with a bill that restricted its operation entirely to the slave States. I told him it would not do; the bill was unjust; that it would have to be made more liberal; and I set to work and drew up one, forfeiting all the estate of any person engaged in the rebellion, or who should give aid and comfort to it, making the bill prospective, and allowing thirty days' notice, to give those who are still with the rebels knowledge of the passage of such a bill, that they might, if they chose, repent and come back to their duty and their allegiance to the Government.

I knew—and that was the reason why I introduced one feature of it—the conscientious objection of a great many men to the Government selling slaves. With a view of obviating that objection, I have proposed, as may rightfully be done, that the forfeiture shall not inure to the United States Government, but to every person injured by the rebellion in his person or property. I propose that where any man falls in battle or dies from disease in this war, he shall be held to have received damage from the confederates to the amount of $5,000, and his personal representatives may sue for or assign the claim. It is a very small estimate to say that when this deplorable war is concluded, when blood ceases to flow, and the dove of peace is again in our land, at least fifty thousand stalwart men of the free States will have perished. My bill would provide $250,000,000 for the class of men who shall have thus died in the service. I then provide that every man who shall be disabled in the war to any extent, shall have a claim upon this forfeited property of the confederates to the amount of his actual damage, to be ascertained by a jury. There will be at least fifty thousand more that will be disabled to a greater or less degree. Their damages would amount, upon an average, say to $1,000. That would be $50,000,000 of additional claims that the true and patriotic men of the free States would have on the property of the rebels, the very men who brought this war on the country, and who had been the cause of the infliction of death and disability upon them.

I propose, furthermore, that every man whose debts or property have been seized, confiscated, forfeited, or appropriated by the rebel government, or any persons under its authority, shall be remunerated fully. These debts due to the North are estimated to amount to $200,000,000. The claims of northern men that are intended to be provided for by this bill will amount at the close of the war to not less than $600,000,000. Suppose the property of the rebels should be confiscated to the United States, and sold as indemnity of the United States for its expenses. Their lands without their slaves would be of but little value. The great amount of their wealth consists of their slaves. These slaves amount to a little over three and a half millions, and before these troubles would have brought $2,100,000,000. That sum would be sufficient to indemnify the United States for probably all the expenses of the war. I care not, and my people care not, whether you put the forfeiture in the one form or in the other. With all the faults of my frank and gallant and erring State, a mercenary and a mean disposition is not to be charged against her. All that I desired in making this change was to avoid, if I could, the extreme objection that men had that the United States Government should be concerned directly or indirectly in the sale of slaves. I think I have achieved that by directing the forfeiture, not to the Government, but to the men injured by the war. Property is often forfeited by laws of Congress to injured men——

Mr. HOWARD. I would inquire of my honorable friend from Kentucky what benefit would that sort of indemnity be to the representatives of persons residing in the free States who have fallen or been damaged in this war? How could they possess and enjoy a negro slave in a free State?

Mr. DAVIS. If my honorable friend will permit me to explain, my bill provides for that. It provides that there shall be a lien in favor of every man injured in this war in the way I have explained upon all the rebel property of any kind; and all that the representatives of a northern man who has fallen in battle would have to do, would be either to assign his claim—for the bill authorizes the assignment of the claim—or to send and have a suit instituted as under a common mortgage, proceeding *in rem*, and to have so much of the property thus confiscated, of any description

whatever, sold as would satisfy the claim of the individual. If confiscation can be executed in any form, this is the form in which it can be executed, and in which it is practicable. Whenever you give a man a private right and the means of asserting that private right, he is going to do it if the claim is of any consideration.

I do not care about this matter of forfeiture particularly. I want the rebel leaders punished. Those that are impenitent and incorrigible, and continue to be so, I want punished. They cannot live in the same country with Union men. They must come back and submit to the laws and live as quiet citizens, or they must perish upon the gallows or go into exile. If you want to proselyte them and bring them back to the Government and induce them to drop their secession and disunion principles, in my opinion the way to do that most effectually is to offer them, on the one side, where they are not very guilty, immunity, peace, and protection, and on the other, the gallows or exile and the forfeiture of their whole estate. My State wants such a law as that. The Union people of my State want it. I am ready here to vote for it; but not to free their slaves, not to free any slaves, because Congress has no power to do that. I am for Congress passing—and I would be quite as severe and as unrelenting in my feelings and conduct as most men—any law of punishment, of forfeiture of life or property, to fall upon the guilty, the egregiously guilty, and to spare the ignorant and deluded, and to offer them the hope of immunity and pardon. But, sir, I would want such a law as that passed with a condition. I would not want unconditional immunity offered to any man who had left his State to join the rebellion. I do not care what his degree of guiltiness was, I would want him pardoned only on the express condition that he should give up his treason, that he should come back, and submit himself quietly, orderly, as a good citizen, to the law, and whenever he showed a disposition to rise in rebellion against the law that he should still be subject to be prosecuted for his original crime. We cannot have harmony, peace, and quiet upon any other conditions.

Mr. President, I have now laid before the Senate, very briefly, the main features of the measure I have offered. I am only sorry it has not received more of the attention of members. It probably has received as much or more than it was entitled to. But, sir, I want this war to be quick and powerful. Our armies are composed of the best material that ever were put in martial array. The superiority of soldiership over generalship that has been shown in this war has been most striking. The war itself would have been brought to a successful and triumphant close before this time, if we had had adequate talent and enterprise in our commanders. There is no doubt about it.

But, sir, no state of the case will ever induce me or the Union men of my State to go into secessia. As Hamilcar brought his infant son Hannibal to the family altar and made him swear eternal enmity to the Roman power, so I have sworn and will ever maintain eternal enmity to the principle of secession and all its adherents. I want my country to put them down in the battle-field; and I want wise, just, and effective laws passed by Congress to bring about that great result. I am on the brink of the grave. Its crumbling edge is ready to receive me; but I have children and grandchildren, and I want my country restored to peace, and I want the ægis of its Constitution and protection to be extended over my posterity and all my countrymen before I go hence.

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